



ACTEDO

Equality and Human Rights
Action Centre

THE PRO BONO NETWORK FOR HUMAN RIGHTS

Report 2015 - First Year of Activity

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Report: 2015 – The First Year of Activity

Cluj-Napoca

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Partners:

Center for Legal Resources (CLR)

Global Network for Public Interest Law (PILnet)

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Translation from Romanian by Alexandra Columban

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Photo: Andreea Hoțopan

FOREWORD

The project led by the Equality and Human Rights Action Centre (ACTEDO) has truly impressed us, not only because of the commitment of its staff members and volunteers, but also because of the tangible impact achieved during this short period of time in the legal and NGO community.

I am convinced that the NGOs, community groups and individuals from rural Romania who seek professional *pro bono* legal advice for their own or their communities will benefit from this outstanding project even after the expiry of the current grant.

We were delighted to contribute to the success of the project with our expertise and knowledge. I wish ACTEDO good luck and courage in their future efforts creating such a great alternative access to justice scheme in Romania.

Tamas Barabas dr. jur.

Senior Legal Office

PILnet: The Global Network for Public Interest Law

PILnet Foundation, Budapest



ACKNOWLEDGEMENTS

First and foremost, the ACTEDO team would like to thank the lawyers who are part of The Pro Bono Network for Human Rights, who have shared their expertise and time voluntarily in order to bring real change in the lives of many. Without their passion and involvement, this project would not have been possible.

We would also like to thank our partners, the Center of Legal Resources, and especially Delia Niță and Georgiana Iorgulescu, for their support, expertise and pivotal involvement in the creation and development of The Pro Bono Network for Human Rights.

We thank our donors and sponsors for believing in this project and its positive impact in the community. We are particularly grateful to Farmec Company, who will support the continuation of The Pro Bono Network for Human Rights in 2016.

Last but not least, we thank our devoted volunteers, whose efforts fundamentally contributed to the writing of this report: Andreea Hoțopan, Nima Nematollahi, Raluca Alexa and Daniela Teodora Toma.

The ACTEDO Team



Pro Bono Lawyering – Professional Instrument and Philosophy

Center for Legal Resources (CLR)

A first aspect of pro bono lawyering is that it represents an instrument to facilitate access to justice. Traditionally, pro bono means offering free legal services to people in vulnerable situations, whose fundamental rights have been violated or who cannot afford to pay for the services of a lawyer. Thus, because of pro bono, people who would otherwise not have access to justice can in fact gain it. They too can be protected.

An analysis of ACTEDO, CLR and Save the Children Iași conducted as part of another project financed by the EEA Grants has shown that legal services are almost entirely absent from the social services offered by NGOs working with vulnerable groups – people affected by HIV/ AIDS, persons with disabilities, Roma, victims of gender-based violence, of human trafficking and children in vulnerable situations. One of the consequences of the absence of a lawyer is the increase in the risk of abuses becoming permanent and an intensification of their vulnerability.

The second aspect reflects a certain manner of regarding the legal profession in a consolidated democracy. From this perspective, lawyers are fully aware of their essential role in defending the fundamental rights of all people, without allowing financial means or vulnerability to block any person's access to justice. In addition, it is lawyers who are primarily called to facilitate this access. The lawyer in this situation understands to give something back to society, chooses to dedicate part of their time and knowledge to help somebody who otherwise would not be helped, in instances when this help makes all the difference and can change destinies. The lawyer in this situation works pro bono also because he/she wants to change the legal practice, to contribute to the well-functioning of society, to give back and have the satisfaction that they are improving things for their community.

An essential role in the real and sustainable manifestation of the two aspects of pro bono lawyering in Romania belongs to law faculties. Both aspects need to be included in the ethics of future legal practitioners.

The Center for Legal Resources joined ACTEDO on the assumption – and later on happily discovering – that pro bono can also exist in Romania. ACTEDO has planted the seeds. Now The Pro Bono Network for Human Rights needs to go on and keep expanding. There is also need, as we were arguing in the position paper *Pro Bono Lawyering – an indicator of the*



*functioning of the profession in a real democracy*¹ for pro bono practice to be regulated and to be encouraged. The impact of generalized pro bono lawyering on human rights and the rule of law may be tremendous.

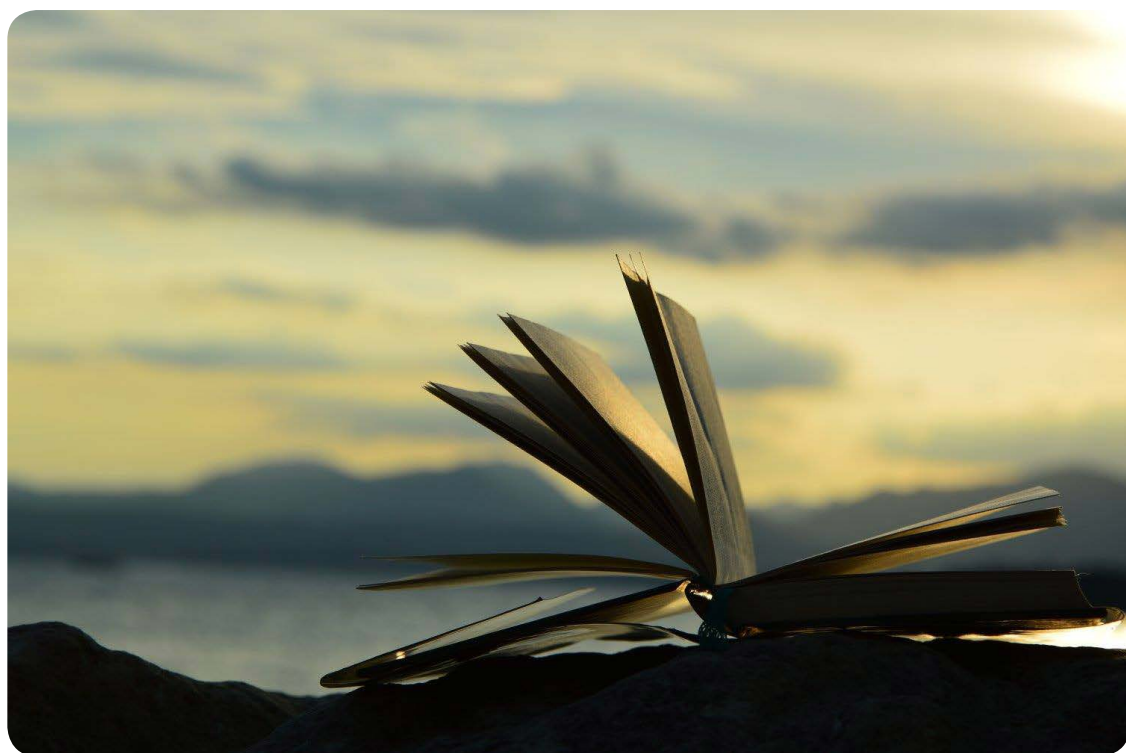


Photo: Andreea Hoțopan

1 Center for Legal Resources, Equality and Human Rights Action Centre and Save the Children – Iași (2015), *Pro Bono Lawyering – an indicator of the functioning of the profession in a real democracy*, available at: http://www.crj.ro/wp-content/uploads/2015/01/AVOCATURA-PRO-BO-NO_final.pdf, pp. 9-10.

THE PRO BONO NETWORK FOR HUMAN RIGHTS: AN OVERVIEW

Introduction

Equality and Human Rights Action Centre (ACTEDO) is a human rights non-governmental organisation, established in 2013, in Cluj-Napoca.

ACTEDO's mission is to promote fundamental human rights and gender equality and to act against human rights violations. We consider that abuses against vulnerable groups and gender inequality are rooted in the lack of human rights education on a national level, in stereotypical beliefs and practices regarding men and women, as well as in the failure of institutions to implement laws and apply adequate sanctions in cases of abuse and discrimination. In order to reach our objectives, we pursue three **strategic directions (programmes)**: Access to Justice, Human Rights Education and Gender Equality.

The goal of this report is to evaluate the way in which The Pro Bono Network for Human Rights has reached its objectives and targeted results, as well as to assess the Network's relevance for its beneficiaries and human rights in general. Moreover, by taking into account the project experience and the analysed data, the role of the report is to inform and to issue recommendations regarding public policies related to access to justice and human rights.

In the following pages, the report presents the main results of The Pro Bono Network for Human Rights, describes some of the cases which benefitted from pro bono legal assistance and presents the opinions of those involved: partners, pro bono lawyers, beneficiaries and project team members. In its final chapters, the report puts forward the conclusions after one year of activity and proposes recommendations for improving the access to justice of vulnerable groups and for promoting human rights legislation.



The First Human Rights Clearinghouse in Romania

The Pro Bono Network for Human Rights, a project coordinated by ACTEDO, is a **pro bono clearinghouse** which specialises in human rights, whose purpose is to facilitate the access to justice of vulnerable groups in Romania.

Through this non-profit project, ACTEDO matches **individuals** belonging to vulnerable groups whose rights have been violated and/ or human rights **NGOs** who work with vulnerable groups with **Pro Bono Lawyers**, who offer their expertise on a voluntary basis. Therefore, ACTEDO is an intermediary agent between beneficiaries and Pro Bono Lawyers, and fulfils the following roles: to receive the requests for pro bono legal assistance, to analyse them, to verify whether they fit the eligibility criteria, to facilitate the contact between beneficiaries and the Pro Bono Lawyers, to offer support and information to lawyers and beneficiaries, and to organize activities and events aimed at consolidating and developing The Pro Bono Network for Human Rights.

The project began as a grass-root, pilot initiative, drawing inspiration from other models of European clearinghouses. The project is based on a human rights approach and starts from the premise that **a pro bono culture consolidates democracy**. In other words, if vulnerable people whose rights have been violated receive free legal aid, better legal services and an improved capacity to defend their rights, then it is very likely that they will resort to the legal system in order to improve their situation, which in turn will lead to a more effective implementation of human rights legislation and to a culture built on civic engagement, tolerance and respect for human rights.

The model according to which The Pro Bono Network for Human Rights functions is original – it is the only human rights clearinghouse in Romania and, as opposed to traditional clearinghouse models, it works directly with vulnerable groups, promoting social justice and contributing to the development of a culture based on rights and empowerment.

Launched on the 18th of December 2014 in Cluj-Napoca through a public debate, The Pro Bono Network for Human Rights is, after one year of activity, composed of 48 Pro Bono Lawyers and 3 partner law firms, it has helped over 100 beneficiaries to defend their rights, it has covered 12 human rights areas, it has received over 100 requests for legal aid, of which 43 were eligible cases and 23 were taken up by Pro Bono Lawyers (in the case of the other eligible requests, the applicants did not want to pursue the case further). Although there are cases from other counties, most of the pro bono legal activity is focused in the counties of Cluj, Mureş, Bistriţa-Năsăud and in Bucharest.

The clearinghouse works directly with vulnerable individuals or groups and offers pro bono legal assistance to people in the following situations, which together represent the **eligibility criteria**:

A. Individuals whose requests fall in the category of violations of fundamental human rights, especially discrimination rights, and

B. Individuals who belong to the following groups considered vulnerable or to NGOs working with them: people with disabilities, Roma, people suffering from HIV/ AIDS,

victims of gender-based violence, including sexual and domestic violence, LGBTQI, youth over 18 who are leaving state care, women, families with more than two children and single parent families at risk, children and elderly people at risk, formerly convicted individuals or who have undergone correctional measures, people suffering from drug and alcohol addiction, homeless people, people suffering from chronic or professional illnesses, refugees and asylums seekers.

These groups are considered vulnerable in national and international human rights and anti-discrimination legislation, as well as in the National Development Plan of the Romanian Government and national operational programmes in the field of social inclusion.

It is important to note that the vulnerability of these groups is defined less by poverty – although many times poverty plays a significant role – but rather by whether one has equal access to the resources and opportunities to fully participate in the economic, cultural and social life and without facing marginalization or rejection.

Clearinghouses are generally recognized by international organisations as an efficient method of expanding access to justice and consolidating the rule of law, together with other similar methods, such as: strategic litigation, paralegals or legal clinics². These methods usually begin as private initiatives and are different from the legal aid offered by the state (which in Romania takes the form of public legal aid or public defence service).

“In France, pro bono is developed by the Bar, which has created several programmes beside the free legal aid provided by the state. For example, *Accès au Droit* is a volunteering programme which offers free legal advice regardless of the applicants’ income. Another initiative is *Barreau de Paris Solidarité*, through which a number of free permanent clearinghouses have been established, including a Solidarity Bus which crosses Paris and offers free legal advice. In addition, the Bar has created a donations fund where lawyers and NGOs can apply to finance various relevant programmes.”³

Pro bono – from Lat. *pro bono publico*, meaning “for the public good” – refers to any voluntary activity, without financial compensation and carried out for a good cause. By offering free legal assistance and representation, the Pro Bono Lawyers contribute to the community and defend the fundamental rights of vulnerable individuals and groups.

2 United Nations Development Programme (UNDP) (2005) *Programming for Justice: Access for All*.

3 Center for Legal Resources et. al. (2015), *supra*.



DIFFERENCES BETWEEN INITIATIVES OF ENSURING ACCESS TO JUSTICE

	Clearing-house	Legal clinic	Community paralegals¹	Strategic litigation	Public legal aid/Public defence service
Who organises it?	NGOs	Law faculties	Individuals, with or without legal studies	Think-tanks/ NGOs	The National Association of Romanian Bars and the Ministry of Justice
Who offers legal aid?	Lawyers	Law students, under the surveillance of an attorney professor	Individuals who are familiar with the community	Lawyers	Lawyers registered on the special Bar lists of Public defenders
To whom is it ad-	Individuals/ NGOs, on public interest matters	Individuals/ NGOs, on public interest matters.	Individuals	Individuals (in either individual or collective actions)/ NGOs	Individuals who are suspects/ defendants in criminal cases (exceptionally, some aggrieved parties as well), plaintiffs/ defendants in certain civil cases. ²
Is the lawyer paid?	No	No	Yes/No (according to the paralegal's preference)	Yes/No (according to the lawyer's preference)	Yes, by the state, with a sum agreed on through a protocol between the National Association of Romanian Bars and the Ministry of Justice.

What criteria are considered for choosing the cases?	Public interest cases. vulnerable groups	Public interest cases. vulnerable groups	Vulnerable groups	Public interest cases which could set a precedent for similar situations or could contribute to the eradication of certain systemic problems.	Allotted in criminal cases. In civil cases, it is allotted based on income.
How is it organised?	Voluntary initiative	Voluntary initiative	Voluntary/ paid initiative	Voluntary/ paid initiative	Mandatory, by the state, for lawyers who register on special lists.

Pro Network for Human Rights in 2015

2015 was the first year of activity of The Pro Bono Network for Human Rights. With the help of the EEA Grants 2009-2014, of our partners, of the project team and the volunteers, ACTEDO has managed to set up a strong and involved community of Pro Bono Lawyers in 7 counties and in Bucharest and to offer support to over 100 beneficiaries, through 23 pro bono cases.

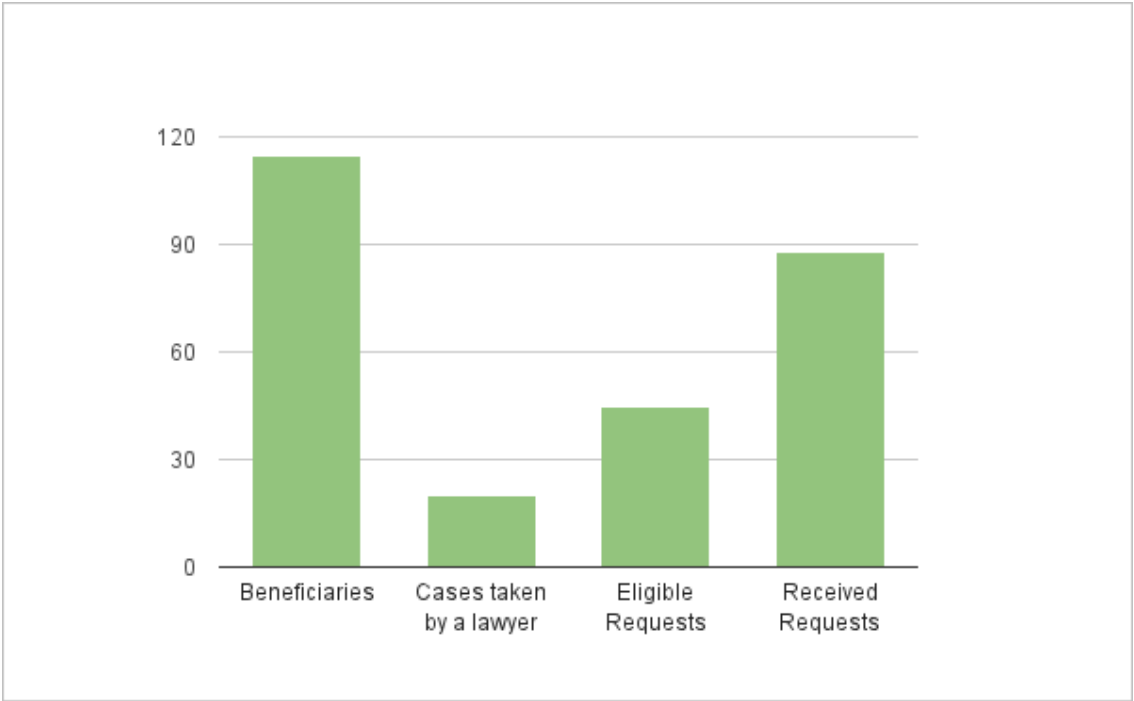
Most of the beneficiaries of the programme – 84% – reside in urban areas. Only 16% of people living in rural areas have contacted The Pro Bono Network for Human Rights in 2015 to request legal aid. Some of the reasons for this discrepancy might be that most applicants first contacted ACTEDO online (by email or through the online application form) and that the dissemination and promotion of the project took place primarily online.

One of the important indicators for the project's success consisted in verifying the applicants' perception on their alternatives have they not contacted the Pro Bono Network. 11 of the 16 respondents to ACTEDO's telephone survey replied either that they do not know of any other solution, or that they would not have had any alternative to the legal aid provided through ACTEDO. A recurrent reason for this, which was mentioned 4 times, was the financial one – they would not have afforded a lawyer.

11 of the 16 interviewed beneficiaries do not know what they would have done had it not been for The Pro Bono Network or did not have any alternatives.



In the first year of activity, 23 lawyers got involved in defending cases of human rights violations on a voluntary basis. 16 of the lawyers were interviewed by telephone by ACTEDO, as part of the project evaluation activities. The dominant form of support provided was legal advice, followed by legal assistance and representation in court or in relation to various institutions. Not all cases required legal representation, as some of the applicants either needed only information regarding their rights, or lived too far from the lawyers' offices and could not travel.



In 5 of the cases, the Pro Bono Lawyers declared that they represented their clients in court or in relation to other institutions. In 8 cases, the lawyers helped the beneficiaries access the court remedies, either by representing/ assisting them in the court session, or by drafting actions and requests. In the remaining cases, either there was no need for applying court remedies because there were alternative criminal or civil procedures they could resort to, or legal advice was deemed sufficient by the beneficiaries.

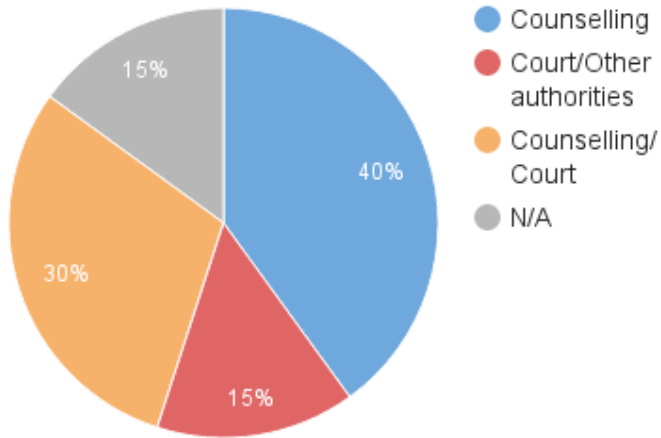
The evolution of the cases has showed that, for half of them, lawyers considered their pro bono activity to be completed. The remaining 50% of cases are on-going, due to various factors such as lengthy procedures, the complexity of the issue at stake, the need for further information or documents from the clients in order to start a legal action.

94% of the interviewed lawyers consider that, generally, lawyers should offer pro bono assistance and representation as part of their profession.

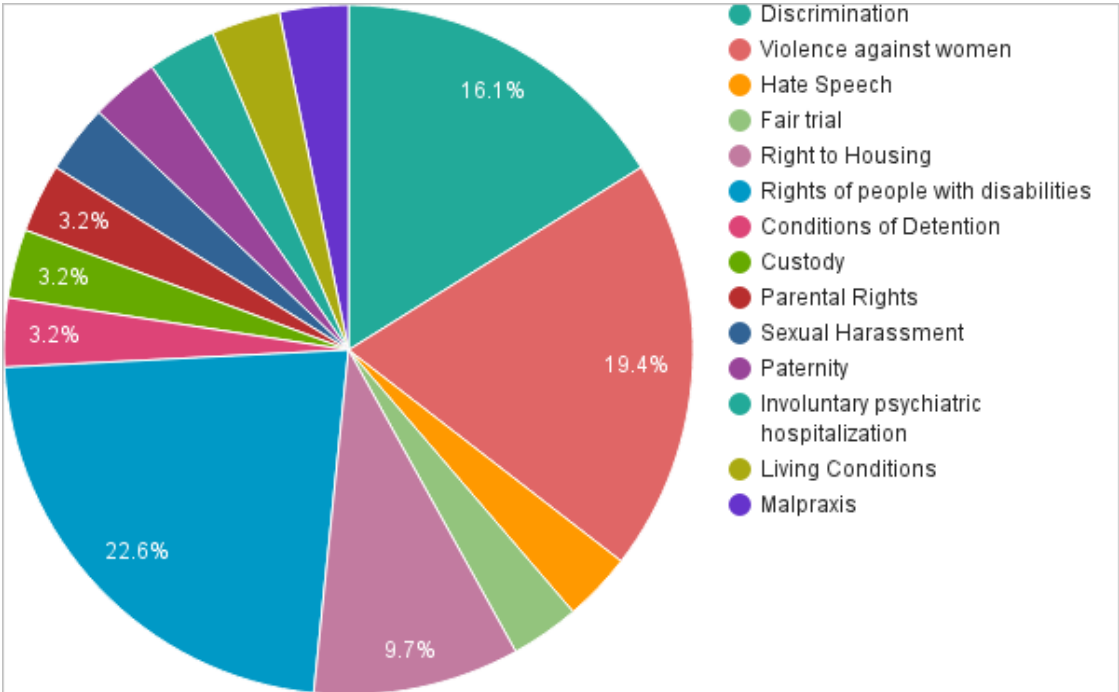
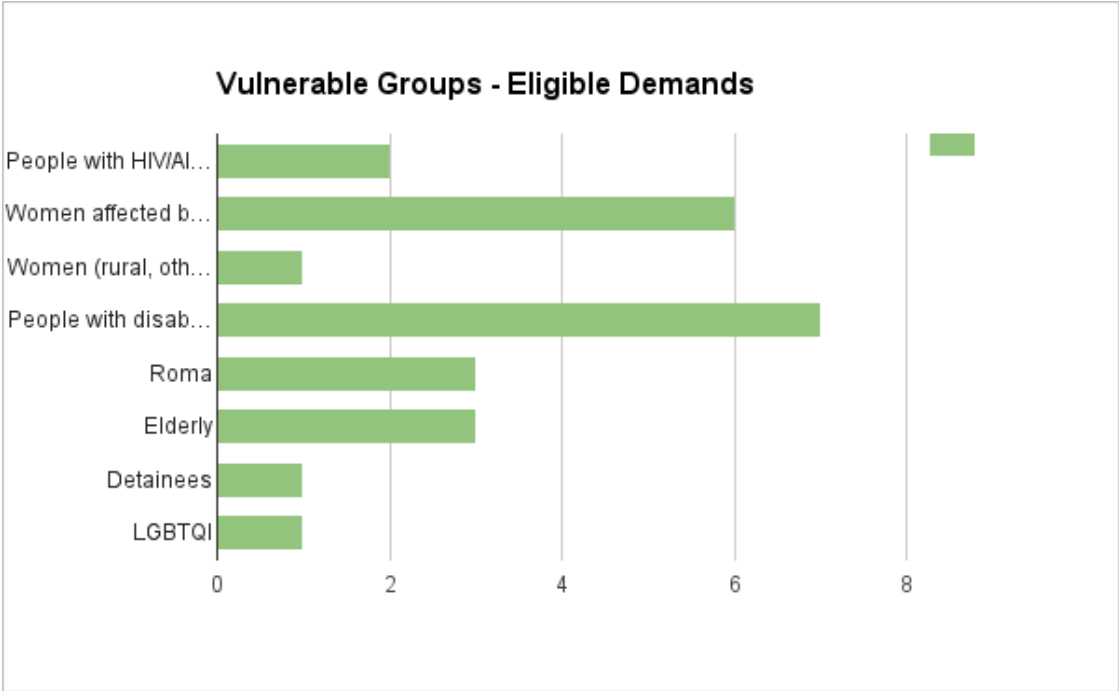
The overwhelming majority (94%) of lawyers who have taken pro bono cases consider that, generally, lawyers should offer pro bono assistance and representation as part of their profession. However, a part of them stated that pro bono should not be mandatory or imposed by the professional ruling entities. When asked to choose two reasons why they engage in



Requests for legal assistance by county



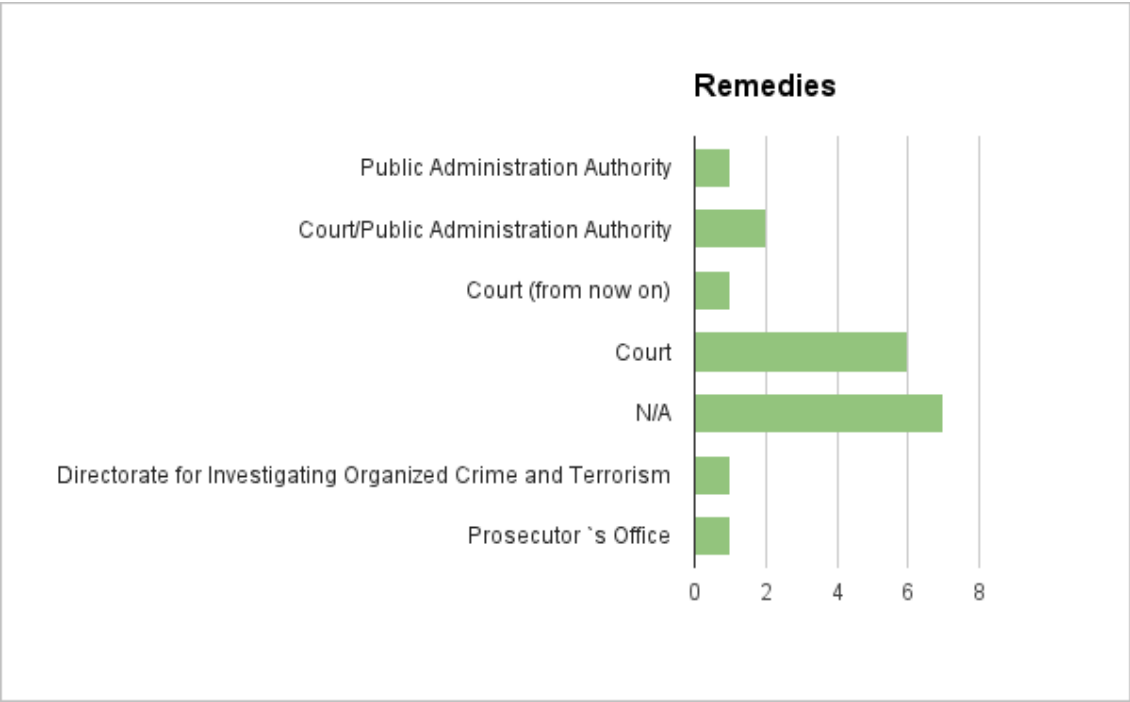
As far as the regulation of pro bono in Romania is concerned, 75% of the lawyers (12 people) who replied to ACTEDO's survey reported that they fully agree, while 19% stated they mostly agree that pro bono should be regulated, meaning that this activity should be offi-



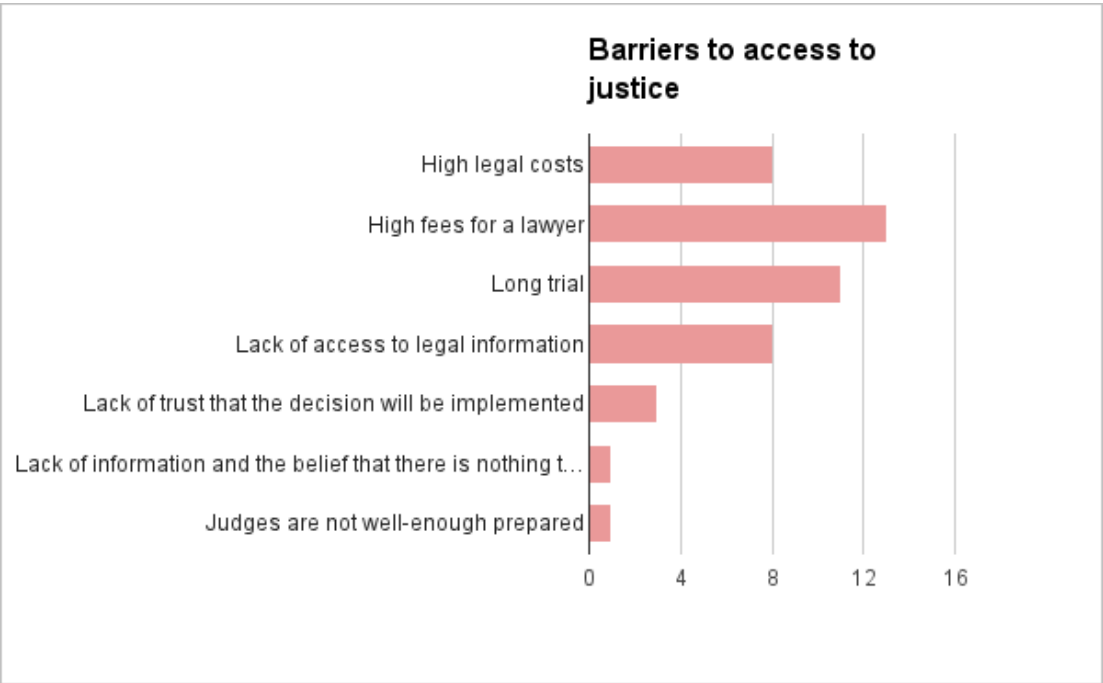
cially recognized in the Law on the legal profession.

When asked to identify the biggest obstacles in engaging in pro bono, lawyers overwhelm-





ingly chose lack of time (94%) as a discouraging factor. On the other hand, when asked to choose two factors that would encourage them to do more pro bono, lawyers chose “legal trainings on various topics” (69%), followed by “consulting other lawyers or experts in the field” (56%) and “help from volunteers, including students” (31%).





THE PROJECT ACTIVITIES

Between July 2014 and January 2016, ACTEDO, as the coordinator of The Pro Bono Network for Human Rights, organised a series of activities to successfully implement the pilot model of the clearing-house:

- ❖ Two work meetings with our partners (Center for Legal Resources and PILnet) in Bucharest and Cluj-Napoca. Results: exchange of ideas and good practices, transfer of knowledge and expertise in applying anti-discrimination legislation.

- ❖ Adoption of the Standing Rules of The Pro Bono Network for Human Rights, as a result of a consultation process

- ❖ Three training sessions for lawyers on anti-discrimination and relevant ECHR (European Court of Human Rights) jurisprudence, attended by 43 lawyers from Cluj, Mureş and Bistrița-Năsăud counties and Bucharest. The training sessions were transdisciplinary and included legal and social aspects, as well as elements of social psychology, advocacy and NGOs' work with vulnerable groups. Trainers: Georgiana Iorgulescu (Executive Director, Center for Legal Resources) and Delia Niță (Manager of the Anti-discrimination Programme, Center for Legal Resources). Guest speakers: Radu Chiriță (Associate Professor





Faculty of Law, Babeş Bolyai University Cluj-Napoca and coordinator of Chiriță and Associates Attorneys at Law, partners in the project), Liviu-Marius Harosa (Associate Professor at the same Faculty), Marian Mandache (Director of Romani CRISS and lawyer), Maria Stoleru (Gender expert AFIV-Artemis Association and social worker).

- ❖ Public debate: *Access to Justice of vulnerable Groups*, Cluj-Napoca, December 18th, 2014. 70 participants. Guests: Mircea Pop (Dean of the Cluj Bar Association), Lorna Kralik (The Global Network for Public Interest Law - PILnet), Delia Niță (Center for Legal Resources), Oana Cuiubus (Pro Bono Lawyer Roșia Montană), Iulia Pascu and Ioana Tuță (ACTEDO).



- ❖ Three work meetings with NGOs from Cluj, Mureș and Bistrița-Năsăud counties. Participants: 32 representatives of NGOs, two journalists, one representative of Social Services, one representative of the Police Inspectorate of Cluj County. The goal of the meeting: to analyse the specific legal issues of the vulnerable groups with whom the participants work and the obstacles in their access to justice.



- ❖ Four work meetings with lawyers, members of The Pro Bono Network for Human Rights or interested in the project (in Cluj-Napoca, Bistrița, Târgu-Mureș and Bucharest). The goal of the meetings was to evaluate the project activities, the relationship with the beneficiaries and present other activities.



- ❖ The participation of the ACTEDO team to three European conferences: the European Pro Bono Forum (London, November 2014 and Rome, November 2015) and the European Network for Clinical Legal Education conference (Budapest, October 2015).

- ❖ Public debate targeting law students: The Legal Clinic, and Instrument for Defending Human Rights, at the Faculty of Law of Babeş Bolyai University, December 11th, 2015. Guest speakers: Dr. Andrés Gascón-Cuenca (Director International Human Rights Clinic, University of Valencia), Associate Professor Sergiu Bog-

dan (Vice-Dean of the Faculty of Law), Delia Niță (Center for Legal Resources), Dana Ududec (lawyer), Iulia Pascu (ACTEDO).

❖ Reception for celebrating one year of activity (December 11th, 2015), where ACTEDO offered certificates of excellence for the Pro Bono Lawyers who took cases in 2015.

Alianța Europeană Pro Bono



INTERNATIONAL AFFILIATIONS

ACTEDO is a member of the **European Pro Bono Alliance**, a network of pro bono clearing-houses across Europe whose purpose is to promote pro bono and facilitate collaboration between organisations in the field. ACTEDO joined the Alliance in 2014, becoming the first

member from Romania.

In 2015, ACTEDO became a member of **Victim Support Europe**, an umbrella organisation which promotes the rights of victims of crime and represents the interests of 41 other European organisations working in this field.

ACTEDO'S PARTNERS IN THE PROJECT

The Global Network for Public Interest Law (PILnet) is an international organisation established in 1997 by the legal department of Columbia University (New York) with the goal of promoting law as an instrument for the public interest. In 2002, PILnet created a branch in Budapest in order to coordinate European activities. Since 2013, PILnet has supported the ACTEDO's activities by organising trainings for the project team and facilitating their participation in the European Pro Bono Forum and the activities of the European Pro Bono Alliance.

Center for Legal Resources (CLR) is a nongovernmental organisation from Romania. Established in 1998, CLR works to create and develop a legal and institutional framework which would ensure the protection of human rights and gender equality, as well as facilitate the free access to adequate justice. Since 2013, CLR has supported the creation of The Pro Bono Network for Human Rights through knowledge transfer, training sessions for lawyers and by participating in the project's activities: debates, trainings, receptions, etc.

Chiriță and Associates Attorneys at Law is a private law firm coordinated by lawyer and Associate Prof. Radu Chiriță. Radu Chiriță currently teaches constitutional law and human rights at the Faculty of Law of Babeș-Bolyai University Cluj-Napoca. In addition, he is an associate researcher at the Legal Research Institute of the Romanian Academy, a lecturer at the National Institute for Lawyers' Professional Development and author of over 20 books and 50 articles on human rights and ECHR jurisprudence.

Costaş, Negru and Associates Attorneys at Law is a private law firm founded in 2013. Cosmin Flavius Costaş, partner and co-founder, is a professor at the Faculty of Law in Cluj and since 2015 he teaches Public Finance Law and national and European fiscal legislation. He has been a barrister since 2005 in all Romanian courts, the Constitutional Court, the European Court of Justice and the European Court of Human Rights.

David, Corcheș and Associates Attorneys at Law is a private law firm founded in 2015, in Cluj-Napoca, specialised in the protection of human rights, malpractice, consumer protection, administrative law, and, among others, criminal law. From the creation of The Pro Bono



Network for Human Rights, the firm has supported it, driven by the conviction that lawyers have an important role: to defend not only the stronger members of society, but also the vulnerable ones.

FINANCIAL ALLOCATION

This project was financed through the EEA Grants 2009-2014, as part of the NGO Fund in Romania, and received 53,483.12 Euros. ACTEDO's contribution was 6109.56 Euros, of which 3054.78 Euros represented the financial contribution.

Financing period: July 1st, 2014 – April 30th, 2016.

The Pro Bono Network for Human Rights in the Media

In its first year of existence, The Pro Bono Network for Human Rights attracted the attention of local and national media. The cases taken by the Pro Bono Lawyers are life stories that newspapers, radio and TV stations brought to the attention of the public in a dignified and ethical manner, so that news about the support offered by ACTEDO reached many people across Romania. Since its official launch, there have been over 25 articles, reports, interviews, as well as radio and TV appearances on the Pro Bono Network. These are a few of them (in Romanian only):

- TVR Cluj, *Regional Café* Talk Show
- TVR Cluj, *Jurnal Regional*
- Digi24 Cluj-Napoca, “No Money for Special Needs Children”⁴
- Vocea Transilvaniei: “A lawyer from Cluj offers pro bono legal counsel on cases of forced evictions. She is currently working with 80 people at risk”⁵
- Cluj 24h: “Cluj County Council and Cluj County School Inspectorate, two municipalities and various schools sued by parents of special needs children. They want their rights to be respected”⁶
- Adevărul Blogs: “The City Hall is teaching us how to pay more and get less”⁷
- Juridice.ro: “ACTEDO offers free legal assistance to the victims of the Bucharest fire”⁸, “Mureș Bar Association: Work meeting with The Pro Bono Network for Human Rights/ May 5th, 2015, Târgu Mureș”⁹
- Ziar de Cluj: “National premier in Cluj: a free legal assistance project for individuals and NGOs is launched”¹⁰
- Cluj AM, Radio Cluj, Radio Paprik

4 Available at: <http://m.digi24.ro/Media/Emisiuni/Regional/Digi24+Cluj-Napoca/Vocile+C-lujului/Alocatiile+speciale+ignoreate+de+autoritati>.

5 Available at: <http://www.voceatransilvaniei.ro/o-avocata-din-cluj-consiliaza-pro-bono-ca-zurile-de-evacuare-fortata-in-prezent-se-ocupa-de-situatia-a-80-de-persoane-aflate-in-pericol/>.

6 Available at: <http://cluj24h.ro/cj-cluj-isj-cluj-doua-municipii-si-mai-multe-scoli-chemate-in-judecata-de-parintii-copiilor-cu-nevoi-speciale-vor-ca-drepturile-lor-sa-fie-respectate/>.

7 Available at: http://adevarul.ro/news/bucuresti/primaria-invata-platim-mai-mult-ca-mai-prost-1_5612319ff5eaafab2c53dc62/index.html.

8 Available at: <http://www.juridice.ro/406817/actedo-ofera-asistenta-juridica-gratuita-victimelor-incendiului-din-bucuresti.html>.

9 Available at: <http://www.juridice.ro/373984/baroul-mures-intalnire-de-lucru-reteaua-pro-bono-pentru-drepturile-omului-5-mai-2015-targu-mures.html>.

10 Available at: <http://www.ziardecluj.ro/premiera-nationala-la-cluj-se-lanseaza-un-proiect-de-asistenta-juridica-gratuita-pentru-persoane-fizice-si-ong-uri>.



Iulia Pascu, Coordinator of The Pro Bono Network for Human Rights

The Pro Bono Network for Human Rights responds to the need for access to justice of vulnerable groups, when their fundamental rights are violated. The role of the project is to eliminate some of the barriers that these people face when they want to defend their rights.

What is access to justice?

Access to justice is not only a fundamental right, but also a key instrument for defending other rights. As a fundamental right *per se*, access to justice is mentioned explicitly and implicitly in numerous international treaties, as well as in the Romanian Constitution (Art. 21, *The Free Access to Justice*). In the same time, access to justice is essential for upholding other rights guaranteed by the law, such as non-discrimination, the right to education, health and to adequate social services. Access to justice is not an absolute right¹¹, but restrictions imposed by the state must not, in practice, limit this right.

Thus, access to justice is an essential trait of any democracy and is part of the rule of law. The connection between access to justice, on the one hand, and the reduction of inequality and poverty, on the other hand, has been illustrated by various development pro-

LEGAL SOURCES ON ACCESS TO JUSTICE

Art. 21, Romanian Constitution

Art. 6 (The right to a fair trial) and Art. 13 (The right to an effective remedy), European Convention on Human Rights (Council of Europe)

Art. 61, Treaty on European Union

Art. 47, The Charter of Fundamental Rights of the European Union

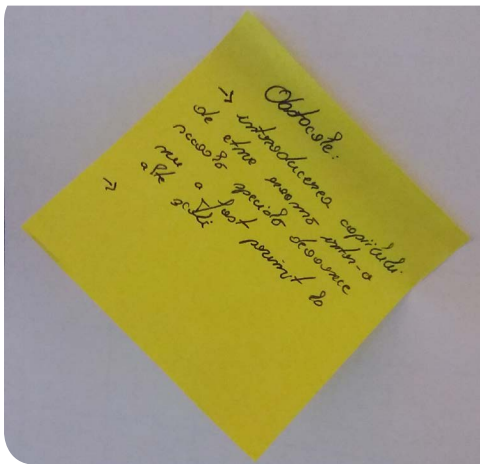
Art. 8. and Art. 10, Universal Declaration of Human Rights (UN)

Other UN Conventions: Art. 13, Convention on the Rights of Persons with Disabilities; General Recommendation no. 33 regarding women's access to justice of the Committee on the Elimination of Discrimination against Women; Art. 37, Convention on the Rights of the Child; The Hague Convention on International Access to Justice, ratified by Law no. 215/2003; Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental issues in the EU, ratified by Law no. 86/2000.

11 Constitutional Court, Decision 236/2001: *"Free access to justice means that any individual may appeal to court if they consider that their rights, freedoms or legitimate interests have been violated, and not that this access cannot be submitted to any conditioning"*.

grammes of international organisations. Democracy is weakened when not everybody has access to justice (regardless of their gender, race, religion, age, social status, etc.)¹². People suffering because of marginalisation, poverty and discrimination are generally more prone to committing illegal acts, such as fraud, theft, sexual exploitation or violence. Furthermore, a violation of their rights will only reinforce their vulnerability, which will make it even more difficult to defeat poverty and marginalisation. In this context, the justice system can be used to leave the vicious circle of poverty, for example by ensuring access to education or by applying jurisprudence on social and cultural rights.¹³

In practice, access to justice means much more than the mere access to court in order to



obtain legal solutions, as it is defined by national and European legislation¹⁴. For instance, the United Nations (UN) start their analysis of the most frequent barriers that vulnerable groups encounter in their access to justice from the beginning of a legal problem, to filing a complaint and ending with the legal solution. The process included access to legal information, comprehension of legal issues, effective protection, legal aid, pro bono lawyering, strategic litigation, paralegals, obtaining a decision, developing the capacity to implement the decision, civil society programmes for monitoring human rights, etc.¹⁵ **Therefore, access to justice is defined as the ability to search and obtain legal solutions**

for the injustices suffered, through formal and/ or informal justice institutions and according to human rights standards¹⁶.

How easy is it for vulnerable groups to have access to justice?

If a person cannot afford a lawyer's fee then can they resort to a court solution? What about a person with disabilities who is reluctant to file a complaint against a public institution because they fear losing social welfare? What happens to a person who does not have access to information and does not know their rights or that they could find a legal solution?

In reality, there are many obstacles that can hinder access to justice. These obstacles may be operational, which have to do with the efficiency of administrating the justice system, to

12 UNDP (2004) *Access to justice, Practice Note*.

13 UNDP (2005), *supra*.

14 M. Elvira Méndez Pinedo (2011) *Access to justice as hope in the dark in search for a new concept in European law*, International Journal of Humanities and Social Sciences, Vol.I, no. 19.

15 UNDP (2004), *supra*.

16 UNDP (2005), *supra*.



the lengthy procedures of public legal aid, as well as structural, related to social inequality¹⁷. Structural barriers are most evident in the case of vulnerable groups and refer to social conditions that create social disadvantages: poverty, domestic violence, lack of education, racism, sexism, ill health, disability, etc. Thus, there is a discrepancy between the formal access to justice (guaranteed by law to everybody) and effective access (as a result). As a result, a policy aimed at facilitating access to justice needs to consider not only the trial and court efficiency, but also the specific needs of vulnerable groups, while at the same time empowering them to defend their rights.

BARRIERS TO ACCESS TO JUSTICE¹⁸

1. On a national level

- a) Lack of a legal framework and legislation that contradicts human rights principles and non-discrimination
- b) Low capacity to apply international principles and norms
- c) Discriminatory social and cultural practices, including traditional practices of social exclusion
- d) Failure of the state to develop the capacity of vulnerable people to understand and defend their rights

2. On an institutional level (Ministry of Justice, courts, Prosecutor's Office, Police, alternative conflict solving methods, etc.)

- a) Lack of human and financial resources for trainings, access to information and current legal instruments, etc.
- b) Lengthy trials
- c) Lack of integrity, independence and accountability mechanisms
- d) Excessively bureaucratic behaviours and attitudes
- e) Lack of accessibility (distance to courts, complex procedures, language barriers, etc.)
- f) Lack of human rights monitoring (by civil society, Parliament, national human rights institutions, etc.)
- g) Low application of court decisions and verdicts

17 Abregu (2001), *Barricades or Obstacles: The Challenges of Access to Justice* in Van Puymbroeck (ed), *Comprehensive Legal and Judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century*, Washington: World Bank, pp.53-69.

18 World Bank, *Barriers to Access to Justice*, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20745998~menuPK:1990386~pagePK:210058~piPK:210062~theSitePK:1974062,00.html> (accessed April 4th, 2016).

- h) Limited legal aid, strict eligibility criteria, insufficient funds for legal counselling programmes, complex procedures

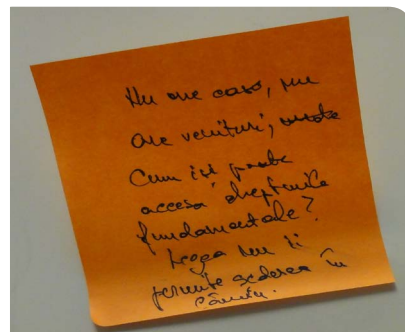
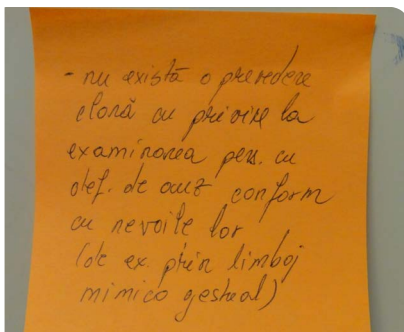
3. On an individual level

- a) Lack of ability to defend one's rights: financial difficulties, geographical isolation, fear of repercussions, internalisation of discrimination, lack of trust in the justice system
- b) Limited access to legal information, lack of legal education

Barriers specific to vulnerable groups:

- a. Economical
- b. Social and institutional discrimination
- c. Insufficient programmes which target vulnerable groups
- d. Fear of repercussions or isolation from local community
- e. Lack of physical access (geographical distance, lack of accessibility for people with disabilities, language barriers for minorities, etc.)
- f. Inadequate protection during investigation (for example, in cases of gender-based violence, including sexual violence, trafficking in human beings, etc.)
- g. Inefficient or complex procedures which do not take into account the needs of vulnerable individuals, lack of appeal options
- h. Lack of specialised services for victims
- i. Lack of trust in the justice system

Data regarding Romania



A study by the Superior Council of Magistracy and the Ministry of Justice, *Improving access to justice for Roma and other vulnerable groups. An integrated approach*, shows the grave lack of understanding of access to justice from a human rights perspective on the part of courts and public institutions: *"The rather overwhelming assertion among Courts and Central/local authorities and some Bar representatives that the problem of equal access to justice is more or less an individual or group problem, is disturbing. It points to a lack of awareness on central aspects of human rights: That it is the responsibility of the state and its authorities to provide human rights to its citizens, and that individual and group differences in equal access must be compensated for by public measures."*¹⁹

The same study shows that the majority of magistrates who responded to the survey do not recognise the vulnerability of certain social groups and believe, for instance, that the following are *not* among vulnerable groups: people living with HIV/AIDS (62% of respondents), Roma (60%), children (59%), single mothers (55%).

During his visit in Romania, the UN Special Rapporteur on extreme poverty and human rights indicated the multiple barriers for vulnerable groups and especially for Roma and people with disabilities. For example, in the case of Roma, of whom, according to the World Bank, almost 90% live in extreme poverty, the lack of housing security is a structural problem which also affects access to justice. In cases of forced evictions international standards in the field are disconsidered: *"Eviction from informal housing does not appear to be covered by the Civil Procedure Code. Article 1042 of that Code is particularly worrying because it limits the grounds on which an eviction can be reviewed before a court. The Code also does not provide adequate time to challenge an eviction notice and there are no legal remedies that allow a claimant to request a court to suspend an eviction"*²⁰.

In the case of institutionalised children with disabilities, the fact that employees of the institutions can be named legal guardians (experience shows the following as common guardians: director of Social Services or a social worker from the institution where the child resides) constitutes a grave conflict of interest and a lack of access to an independent complaint mechanism, which goes against domestic and international standards²¹.

19 Superior Council for Magistracy, Ministry of Justice (2014) *Access to justice for vulnerable groups in Romania*, p. 72, Available at: http://www.csm1909.ro/csm/linkuri/26_01_2015_72130_ro.pdf (accessed April 4th, 2016).

20 End-of-mission statement on Romania, by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights, Bucharest, November 11th, 2015, available at: <http://www.ohchr.org/EN/Issues/Poverty/Pages/CountryVisits.aspx> (accessed April 4th, 2016).

21 Mental Disability Advocacy Center (2015) *Access to justice for children with mental disabilities* and the Center for Legal Resources, *Raport sinteză. Vizite de monitorizare octombrie 2013- martie 2014*, available at: [http://www.crj.ro/userfiles/editor/files/Raport-Sinteza%20Vizite%20de%20monitorizare%20CRJ\(5\).pdf](http://www.crj.ro/userfiles/editor/files/Raport-Sinteza%20Vizite%20de%20monitorizare%20CRJ(5).pdf) (accessed April 4th, 2016).

In the same time, the access to justice of gender-based violence, including sexual violence cannot be attained in the absence of adequate evidence collection. According to the European Agency for Human Rights (FRA), in Romania one in three women will be subjected to physical and/ or sexual violence throughout her life. Nevertheless, sexual violence remains one of the least reported and sanctioned crimes. In order to file a criminal complaint, the victim has to obtain proof of the assault (a certificate she often has to pay for and issued only by forensic institutions). The lack of integrated services and support for the victim, as well as the fact that trained doctors cannot collect forensic evidence is an obstacle to justice²². In fact, individuals claiming they have been victims of police abuse need to obtain a similar certificate from forensic institutions, which is an unjustified obstacle to filing a criminal complaint²³.

Public legal aid and the lack of pro bono regulation

Romania has one of the lowest budgets for legal aid in Europe, of approximately 0.084 Euro/capita²⁴. This is even more alarming given that, according to Eurostat²⁵, in 2014 around 40% of the Romanian population was at risk of poverty and social exclusion. While for criminal matters public legal aid is granted automatically, for civil matters it falls under the provisions of Government Emergency Ordinance no. 51/2008. The small amounts of costs covered, the low rates of public legal aid, the complicated procedures of accessing it, as well as the existence of restrictions, as in some discrimination cases²⁶ constitute obstacles to justice in Romania²⁷.

For example, public legal aid in civil matters:

- is allotted to people whose net monthly income per family member is below 300 RON;

22 Equality and Human Rights Action Centre et. al. (2015), *Joint opinion on the necessary legislative amendments imposed by the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*, available at: <http://violentadegen.ro/wp-content/uploads/Joint-Opinion-NGOs-Istanbul-Convention.pdf> (accessed April 4th, 2016).

23 Breaking the Silence on Sexual Violence Network (2015) *Challenges and Solutions for Victims of Sexual Violence. Sexual Assault Referral Centres as Good Practice*, available at: http://actedo.org/wp-content/uploads/2016/01/Propunere-centre-de-primiri-urgenta_Rupem-tacerea.pdf (accessed April 4th, 2016) and End-of-mission statement on Romania, by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights, 2015, *supra*.

24 European Commission for the Efficiency of Justice (CEPEJ) (2010), *Access to Justice in Europe*, p. 68.

25 Eurostat Statistics, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion (accessed April 4th, 2016).

26 Art. 17, paragraph 3 of Government Emergency Ordinance no. 51/2008: "Public legal aid can be denied when the applicant demands compensation for harm brought to their image, honour or reputation, in situations in which the applicant has not suffered any material loss".

27 Center for Legal Resources, et. al. (2015), *supra*.



- is 50% reimbursed to people whose net monthly income per family member is below 300 RON²⁸.

Several NGOs working with vulnerable groups in Romania presented the main problems when their beneficiaries did not receive free legal aid (even if needed), which had negative consequences, such as lack of sanctions for the abusers or withdrawals of complaints. Some of the issues which would have required legal aid were: cessation of HIV treatment, the salaries of personal assistants, access to social and medical services, trafficking in human beings, obtaining adequate social housing, assistance for women returning from their maternity leaves, obtaining assistance for people with disabilities who need representation in civil matters, sexual harassment at work, support in dealing with authorities, etc.²⁹

28 Government Emergency Ordinance no. 51/2008 regarding public legal aid in civil matters.

29 Center for Legal Resources et. al. (2015), *supra*.

Pro Bono Lawyering in the Romanian Context of the Legal Profession

Dana Ududec, lawyer

Although pro bono legal services are not explicitly regulated in Romanian legislation, there are multiple arguments that support the idea that lawyers have the freedom to work pro bono. However, the current lack of regulation cannot continue without harming projects which are using pro bono to provide access to justice and protect human rights.

Pro bono consists in lawyers exercising their profession freely, without remuneration, as volunteers. Free work implies that there are no constraints or quotas regarding clients or cases, volunteering means the decision to engage in pro bono belongs solely to the lawyer, and without remuneration means that the lawyer has no expectation of financial reward either from the client or from other sources.

Romanian legislation neither outlaws pro bono, nor regulates it. However, lawyering is a liberal profession, which in principle entitles lawyers to choose clients and cases, as well as to establish the level of their own compensation. It is true that the law establishes situations in which litigants must or may be provided with lawyers for free, but that does not enter the definition of pro bono because the lawyer is paid, even if little, and cannot choose the client or the case (e.g. public legal aid and public defenders). Therefore, pro bono remains a goal to strive for, and an essential one for the social role of lawyers and the fulfilment of the principle of lawyering as a liberal profession.



In the following lines, I will briefly analyse the legal norms applicable to lawyers that constitute a legal basis for the exercise of pro bono in the context of promoting and protecting human rights in Romania. My main argument is that there is a foundation in the Romanian legislation, at the level of principle, for the involvement of lawyers in pro bono. Still, these principles must be accompanied by specific regulations that encourage and protect pro bono work, considering it plays an important role in guaranteeing access to justice as a human right.

Lawyers' activities fall under the provisions of Law no. 51/ 1995 for the organization and practice of the lawyer's profession, 2011 Law on the legal profession, Code of Conduct for

Lawyers in the European Union, regulations adopted by the coordinating bodies of the profession (Bar Associations, The National Association of Romanian Bars), as well as other regulations on specific activities of lawyers (for example, Codes of civil or criminal procedures, etc.)

a) The role of the lawyer in protecting human rights



In a society grounded on democratic values and the rule of law lawyers have an essential role. Law professionals are indispensable to the justice system and to litigants and have the responsibility of defending their clients' rights and interests (2011 Law on the legal profession, Art. 7, Paragraph 1, points I and II).

Lawyering's free and independent character is the fundamental principle upon which the profession is based, as it is mentioned in the first paragraph of the first article of Law 51/1995. Furthermore, professional regulations underline the role of the lawyer in protecting human rights, stipulating that lawyers promote and defend human rights and liberties (art. 2(2)) and that they are under the obligation to guarantee the free access to justice and a fair trial (art. 2(5)). Additionally, if a lawyer commits abuses and violates fundamental human rights and liberties, this makes them unworthy of being a lawyer (art. 13(b)).

The most explicit formulation of the lawyer's mission from a human rights perspective can be found in the Code of Conduct for Lawyers in the European Union³⁰, whose approach is much more centered on the role of lawyers in society in general. Therefore, from as early as part 1.1 of the Preamble, it is asserted that, in regards to the lawyer's mission in a society grounded on respect for justice, the lawyer plays a special role. The duties of the lawyer are not limited to the loyal execution of a mandate under the law. They must be loyal to the rule of law and to the interest of those whose rights and liberties they are defending. Moreover, the code considers that lawyers also have duties towards the public, given that the liberal and independent profession of the lawyer is *an essential instrument in defending human rights from the state and other powers of society*.

As far as lawyering's importance in protecting human rights is concerned, pro bono is an instrument by which lawyers can guarantee the defence of human rights. In practice, the pro bono lawyer reaches out to the part of the population that has difficulties in accessing justice adequately, but that is not entitled to a public defender or public legal aid.

Before developing the idea of groups who are not covered by any form of free legal aid from the state, it is worth reiterating the difference between pro bono and two other similar concepts. The follow-up questionnaires collected at the end of the first year of activity of The Pro Bono Network³¹ revealed that some lawyers associated pro bono with public defence and public legal aid. It is important to emphasize that these three concepts are very different, even though they share the quality of involving no costs for the beneficiary. One of the possible reasons mentioned for this association is the small amount of money paid to the lawyer who provides public defence or public legal aid. One of the lawyers who completed the ACTEDO questionnaire, for example, said that the negligible nature of the lawyer's compensation made it in practice a type of pro bono.

As experience with The Pro Bono Network for Human Rights has taught us, those who do

30 The code is fully applicable in Romanian territory, having been adopted by the governing bodies of the profession.

31 The follow-up questionnaires were sent to all members of the Pro Bono Network who had taken cases during the period January 2015 – February 2016. For details regarding the research methodology, please refer to the Methodology chapter of the report.

not qualify for a public defender or public legal aid represent a significant part of the population, one which is in deep need of professional legal assistance in order to have unrestricted access to justice. This need is even more urgent in the context of the new civil or criminal procedures. In such cases, missing a few critical moments of the trial may severely hurt the litigant's chances of having their rights recognized, making it extremely difficult to succeed without proper legal training. In addition, it is important to note that in Romania a very high number of people are at risk of poverty or social exclusion³².

According to a position paper³³ on the regularization of pro bono, the activity would encompass a broad range of cases which do not qualify for public legal aid or public defence. First, the income range necessary to obtain public legal aid for civil matters guaranteed by law nr. 51/2008 is excessively low, approximately three times lower than the gross minimum salary (which, in 2015, amounted to 1050 RON)³⁴. Secondly, in criminal matters, victims are in general not provided with a public attorney³⁵. Finally, as can be noted in the cases received by The Pro Bono Network, there are situations in which vulnerable beneficiaries would avoid losing a right which would lead them to financial ruin and the risk of becoming homeless³⁶, cases of domestic violence and harassment in which the victims have not contacted the authorities and do not have information about their legal options, and other situations where people find themselves "in between procedures" – that is, they have not been taken into account in any administrative, civil or criminal proceeding so that they can solicit a public attorney or public legal/extrajudicial aid³⁷.

In conclusion, pro bono practice by lawyers is in perfect agreement with the principle of defending human rights on which the profession is based. Additionally, pro bono is an answer to real societal needs of vulnerable groups to have access to justice, which shows that pro bono contributes in practice and not only in theory to the protection of human rights.

b) The autonomy of the legal profession

Lawyering is free and independent, with autonomous organization and functioning, as presented by the conditions of the current law on the organization of lawyering (Art. 1(1) of law nr. 51/1995). I consider that the liberty of the profession grants the attorney the right to

32 According to Romania's National Institute of Statistics, cited by Agerpres, available (in Romanian) at: <http://www.agerpres.ro/economie/2015/10/27/ins-romania-primul-loc-in-ue-privind-rata-saraciei-relative-12-24-19>.

33 Centre for Legal Resources et al. (2015), *supra*.

34 *Ibidem*, p.5.

35 With the exception of the following situations: a) large number of victims, in which case a public attorney may be provided for the proper development of the criminal process (art. 80 Criminal procedure code); b) when the aggrieved party is a person with no or limited capacity to act (art. 93, paragraph 4 Criminal procedure code); c) When the judicial body rules that for certain reasons the aggrieved party cannot defend themselves (art. 93, paragraph 5 Criminal procedure code).

36 For example, a case from Cluj-Napoca: a family of nine people, with low income, who lived in the same apartment received very high expenses, because the building's calculated them in bad faith, applying penalties which had no legal basis.

37 For example, involuntary hospitalization as defined by Mental Health Law no. 448/2002, from the moment of hospitalization to the moment when the court confirms that the hospitalization was indeed involuntary. According to art. 62 of the law, the hospitalized person has the right to public legal aid only after the beginning of the trial. Nevertheless, this period can range from 5 days (which is unlikely) to an undetermined amount of time.



work pro bono on cases in which the client, for financial or personal reasons, cannot afford the costs of a paid practitioner. In other words, the freedom to be generous towards people who find themselves in underprivileged conditions is a natural and humane component of an attorney's practice.

In regards to the freedom of establishing the compensation rates, according to the 2011 law, *the compensation is established freely between the attorney and the client, within the limits of the law. It is forbidden to establish minimum, recommended or maximum compensation rates* (Art. 128, paragraph 1). Similarly, according to law no. 51/1995, financial compensation is a right of the attorney (Art. 31(1)) – a right which, in my opinion, can be renounced given the liberal nature of the profession.

Therefore, pro bono is a matter of the autonomy of the profession, which allows an attorney to offer his/ her legal services for free for cases of human rights violations.

c) Dignity, honour and prestige of the legal profession

Among the legal arguments in favour of pro bono, I include the dignity, honour and prestige associated to the practice of law. In Romanian society, in which access to justice is a constitutional right but its practical realization still has a long way to go³⁸, law professionals cannot remain indifferent. Together with the remarkably important status and function of the profession comes the responsibility of the attorney – as a key actor in the justice system – in participating in the continuous evolution of the enforcement of constitutional rights and in the transformation of society into a truly legitimate democracy.

Pro bono lawyering is a manifestation of the attorneys' will to take part in the process of bringing progress to society. Europe's pro bono culture is composed of attorneys and professional institutions who take that extra step towards a society in which they believe in, and in which access to justice is available to all, while the justice system does not submit underprivileged members of the community to secondary victimisation.

In the UK, for example, pro bono is a natural part of the roles of solicitors³⁹ and barristers⁴⁰. Law firms in Europe pride themselves with their pro bono practice⁴¹ and even compete for excellence awards in the field⁴².

38 For more information regarding the access to justice of vulnerable groups, refer to the previous article of the present report.

39 See, for example, The Law Society, Pro Bono Policy, available at: <http://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/Pro-bono-policy> (accessed on January 15th, 2016).

40 See, for example, The General Council of the Bar, Pro bono assistance, available at: <http://www.barcouncil.org.uk/using-a-barrister/pro-bono-assistance/> (accessed on January 15th, 2016).

41 See, for example, DLA Piper, Pro Bono, available at: <http://www.dlapiperprobono.com/> and White and Case, Our Pro Bono Practice, available at: <http://srreview.whitecase.com/probono.htm>

42 See, for example, PILnet 2015 European Pro Bono Awards, available at: <http://www.probonoforum.org/europe/2015-european-pro-bono-awards/> (accessed on January 15th, 2016).

Conclusion

Almost all lawyers interviewed in ACTEDO's survey believe that pro bono should be part of their profession and agree that this activity should be regulated. **Placing pro bono in a grey area of the legislation considerably hinders its development in Romania.** As ACTEDO has previously affirmed⁴³, it is absolutely necessary to regulate this voluntary activity. Given that pro bono is, as I have previously demonstrated, a matter of ensuring the protection of human rights and of exerting professional freedom, dignity and prestige, the complete and utter silence of the law around pro bono is under no circumstances justified.

Right to Legal Aid in Civil Matters under the European Convention on Human Rights

Nima Nematollahi, American international lawyer and ACTEDO volunteer

A. Introduction

Article 6 of the European Convention on Human Rights (hereinafter “the Convention”) — a provision which protects the right to a fair trial in both civil and criminal proceedings — provides for a number of minimum human rights, including the right to legal aid.

When faced with a criminal charge, the right to legal assistance is explicitly set out in Article 6(3)(c) therein. An entitlement to free legal aid in civil cases, however, has been slower to emerge. Article 6(1) applies both to cases involving “civil rights and obligations” and to criminal cases⁴⁴.

*In **Golder v. United Kingdom**, judgment 21 February 21 1975, applying the Vienna Convention on the Law of Treaties and general principles of international law, the European Court of Human Rights found that the Article 6(1) guarantee of the right to a fair trial must be considered to include the right to “access to the courts” in general, in civil as well as in criminal matters. The applicant, a prisoner, had been denied the right to consult a legal aid lawyer for the purpose of bringing a civil libel action concerning an accusation that he assaulted a prison officer during a disturbance in the recreation area of the prison.*

Through a series of judgments, the European Court of Human Rights (hereinafter “the Court”) has interpreted “civil rights and obligations” as including areas such as family law, employment law and commercial law. The principles contained in Article 6(1) may also apply to certain cases involving the relationship between the individual and the state, especially disputes involving money and property. That being said, Article 6(1) does not imply

43 See Center for Legal Resources et al. (2015), *supra*, pp. 12-13.

44 *Golder v. United Kingdom*, no. 4451/70, 21 February 21 1975: “36. Article 6(1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal.”



that the state must provide free legal aid for every dispute relating to a civil right and obligation⁴⁵.

In Airey v. Ireland, judgment 9 October 1979, the Court expanded upon its decision in *Golder*. The Court ruled that the right applies in civil cases when such assistance proves indispensable for effective access to the courts, either because legal representation is mandatory under domestic law or because of the complexity of the procedure or the type of case. Here, the applicant had requested free legal assistance to bring an action for judicial separation because of the unwillingness of her abusive spouse to sign a voluntary separation agreement. Relevant factors for the Court's reasoning included:

- the complexity of the procedure,
- the complexity of the issues of law,
- the need to establish facts through use of expert evidence and examination of witnesses,
- and the fact that the case concerned a marital dispute entailing emotional involvement incompatible with the level of objectivity required by advocacy in court.

The Court noted, however, that the right to access to a court is not absolute and **may be subject to legitimate restrictions**. These include:

- the imposition of financial contributions,
- and that the case be well-founded and not vexatious or frivolous.

There is a clear distinction between Article 6(3)(c) — which guarantees the right to free legal aid in criminal proceedings subject to certain conditions — and Article 6(1), which makes no reference to legal aid⁴⁶. Notwithstanding this, **the Convention is intended to safeguard rights that are “practical and effective”, in particular the right of access to a court**. Hence, Article 6(1) has been interpreted by the Court to **compel states to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court** (*Airey v. Ireland*, § 26).

The question whether or not Article 6 requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of each case (*Airey v. Ireland*, § 26; *McVicar v. the United Kingdom*, § 48⁴⁷; *Steel and Morris v. the United Kingdom*, § 61)⁴⁸. What has to be ascertained is whether, in the light of all the circumstances, the lack of legal aid would deprive the applicant of a fair hearing (*McVicar v. the United Kingdom*, § 51).

45 *Airey v. Ireland*, series A no. 32, 9 October 1979.

46 *Essaadi v. France*, no. 49384/99, 26 February 2002.

47 *McVicar v. the United Kingdom*, no. 46311/99, 7 May 2002.

48 *Steel and Morris v. the United Kingdom*, no. 68416/01, 15 February 2005.

B. Circumstances under which Article 6(1) requires the provision of legal aid

To receive free legal assistance in civil matters, a person must fulfill two **conditions**: (1) the “interests of justice” so require, and (2) he or she does not have sufficient means to pay for legal assistance.

With respect to **the interests of justice**, the Court has taken into account the following elements:

1. the seriousness of what is at stake for the applicant (*Steel and Morris v. the United Kingdom*, § 61);
2. the complexity of the relevant law or procedure (*Airey v. Ireland*, § 24);
3. the applicant’s capacity to represent him or herself effectively (*McVicar v. the United Kingdom*, §§ 48-62; *Steel and Morris v. the United Kingdom*, § 61; *P., C. and S. v. the United Kingdom*, § 100⁴⁹; *Munro v. United Kingdom*)⁵⁰; and
4. the existence of a statutory requirement to have legal representation (*Airey v. Ireland*, § 26; *Gnahoré v. France*, § 41)⁵¹.

The seriousness of what is at stake includes the assessment of the deprivation of liberty and other adverse consequences. Where deprivation of liberty is at stake, the interests of justice call for legal representation. The interests of justice would usually indicate that free legal assistance is required for “vulnerable groups” such as minors⁵², victims of abuse, mentally ill⁵³, foreigners, refugees, and asylum seekers⁵⁴.

49 *P.C. and S. v. the United Kingdom*, no. 56547/00, ECHR 2002-VI.

50 *Munro v. United Kingdom*, no. 10594/83, Commission decision of 14 July 1987: The Commission declared that the lack of legal aid in defamation proceedings against a former employer did not hinder an applicant’s right to access to court because: (a) by its nature, a defamation claim can easily be open to abuse even though it is highly risky and the outcome is unpredictable; (b) defamation proceedings do not necessarily trigger the Airey rule where the consequences are not as serious for the litigants (See *Airey v. Ireland*); and (c) the applicant had a hearing challenging his dismissal in an Industrial Tribunal, during which the same substantive issues were resolved as would have been in defamation proceedings, although it did not specifically consider the allegations of defamation.

51 *Gnahoré v. France*, no. 40031/98, 19 September 2000.

52 *P., C. and S. v. the United Kingdom*.

53 *Aerts v. Belgium*, no. 61/1997/845/105, July 30, 1998, discussed below.

54 *Biba v. Greece*, no. 33170/96, 26 September 2000: The Court found a violation of Articles 6(1) and 6(3)(c). The applicant, an illegal immigrant with no settled employment who was accused of homicide with intent, robbery and of unlawfully entering Greece and was subsequently sentenced to life imprisonment, did not have the means to retain counsel before the Court of Cassation. He was represented at first instance by a lawyer who defended him pro bono. The applicant appealed, but the first instance judgment was upheld. His lawyer’s fees for the appeal were paid by a prison visitor who was a member of a humanitarian organization. As she was unable to pay the substantial costs that would have been incurred on an appeal on points of law, the applicant did not lodge an appeal with the Court of Cassation. The Court noted the seriousness of the charges, as well as the severity of the sentence and the fact that the applicant had difficulties pleading his case in the Greek courts because he did not speak Greek. This, coupled with the complexity of proceedings before the Court of Cassation, led the Court to rule that it would have been impossible for him to prepare an appeal



Of course, the right to legal aid is not absolute, and it may be subject to **restrictions**, provided that they do not restrict or reduce the access to a court in such a manner that the very essence of this right is impaired, that they pursue a legitimate aim, and that there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. It may, therefore, be **acceptable to impose conditions on the grant of legal aid based, inter alia, on the financial situation of the litigant** (*Steel and Morris v. the United Kingdom*, § 62; *Santambrogio v. Italy*⁵⁵) or on his or her **prospects of success** in the proceedings (*Steel and Morris v. the United Kingdom*, § 62). Moreover, it is not incumbent on the state to seek through the use of public funds to ensure total equality of arms between the assisted person and the opposing party, **as long as each side is afforded a reasonable opportunity to present his or her case** under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary.

Hence, a legal aid system may exist which selects the cases which qualify for it. However, the system established by the legislature must offer individuals **substantial guarantees to protect them from arbitrariness** (*Gnahoré v. France*, § 41; *Essaadi v. France*, § 36; *Del Sol v. France*, § 26⁵⁶; *Bakan v. Turkey*, §§ 76 and 75⁵⁷ with a reference to the judgment in *Aerts v. Belgium* concerning an impairment of the very essence of the right to a court). Thus, it is important to have due regard to **the quality of a legal aid scheme within a state** (*Essaadi v. France*, § 35) and to verify whether the **method chosen by the authorities is compatible with the Convention** (*Santambrogio v. Italy*, § 52⁵⁸; *Bakan v. Turkey*, §§ 74-78; *Pedro Ramos v. Switzerland*, §§ 41-45)⁵⁹.

C. **The effectiveness of the legal aid afforded**

to the Court of Cassation without assistance. Lastly, Greek legislation did not provide for legal aid for appeals to the Court of Cassation.

55 *Santambrogio v. Italy*, no. 61945/00, 21 September 2004.

56 *Del Sol v. France*, no. 46800/99, ECHR 2002-II: The Court found no violation of Article 6(3) (c) in the refusal of the Legal Aid Board of the Court of Cassation to provide free legal assistance for the applicant's civil cassation appeal, even though legal representation was required in order to bring the appeal. A critical factor that the Court considered in this case was the quality of the state's legal aid system. In the respective case, there were a number of safeguards against arbitrariness.

57 *Bakan v. Turkey*, no. 50939/99, 12 June 2007 (also see Mehmet and Suna Yiğit v. Turkey, no. 52658/99, 17 July 2007): The applicants were unable to bring an action for damages caused by the killing of Mehmet, their husband and father, by a policeman, because they were refused exemption from court fees by the administrative tribunal. The tribunal stated two reasons for the refusal: (a) that their application was ill-founded, because the policeman had been acquitted of unintentional murder in the preceding criminal proceedings; (b) that the applicants were represented by a lawyer. Citing the Aerts case, the Court noted that by refusing the waiver of court fees, the administrative tribunal decided on the well-foundedness of the applicants' allegations without offering them the opportunity of a court hearing. Further, the Court reasoned that the fact that the applicants hired a lawyer cannot automatically mean that they had the means to pay the court fees. Furthermore, the applicants' lawyer confirmed that he was acting pro bono. The court fee, which amounted to three minimum salaries, presented an excessive burden for the applicants, because they had no income. The Court declared a violation of Article 6(1), finding that the requirement to pay the court fees constituted a restriction and a breach of the applicants' right of access to a court.

58 *Santambrogio v. Italy*, no. 61945/00, 21 September 2004.

59 *Pedro Ramos v. Switzerland*, no. 10111/06, 14 October 2010.

The effectiveness of the legal aid afforded is equally essential. Although the state is not accountable for the actions of an officially appointed lawyer (*Staroszczyk v. Poland*, § 133)⁶⁰, it is the responsibility of the state to ensure the requisite balance between the effective enjoyment of access to justice, on the one hand, and the independence of the legal profession, on the other. The Court has clearly stressed that any refusal by a legal aid lawyer to act must meet certain **quality requirements**. Those requirements will not be met where the **shortcomings in the legal aid system deprive individuals of the “practical and effective” access** to a court to which they are entitled.

D. **Issues related to the procedures of legal aid application and the appointment of a lawyer**

Article 6 does not apply to the proceedings relating to the application for legal aid, including, for example, proceedings concerning the application for legal aid, determination of eligibility for legal aid, granting of legal aid, and appointment of a legal aid lawyer. Notwithstanding this, the Convention **is applicable to the proceedings relating to the application of legal aid to the extent that serious deficiencies in such proceedings may lead to arbitrary denial of free legal assistance or access to court**⁶¹.

In Aerts v. Belgium, judgment July 30, 1998, the Court found a violation of Article 6(1) where the applicant was contesting his commitment to a mental institution and his request for legal aid was rejected because the appeal was ruled “ill-founded” by the domestic Legal Aid Board. The Court found that the applicant, who did not have sufficient means to obtain counsel, could apply for legal aid to make an appeal. It was not for the Legal Aid Board to assess the proposed appeal’s prospects of success; it was for the Court of Cassation to determine the issue. By refusing the application on the ground that the appeal did not at that time appear to be well-founded, the Legal Aid Board impaired the very essence of the applicant’s right to a tribunal.

The procedure for legal aid application **should not be so complex as to put a disproportionate hindrance in the way of the applicant’s right of access to a court**. When a determination of the “reasonable prospects of success” of the case is made, the authority that decides on the legal aid application should not substitute for the court, for example, by engaging in interpretation of controversial legal issues pertinent to the merits of the case to be decided by a court⁶².

The decision-making process on determining the eligibility for legal aid should not be arbitrary. A special emphasis is put on the “appearance of fair administration of justice” and on the guarantees thereof in the national legal systems.⁶³ Thus, **the state authority**

60 *Staroszczyk v. Poland*, no. 59519/00, 22 March 2007.

61 *Aerts v. Belgium*, no. 61/1997/845/105, 30 July 1998. N.B. following the Aerts decision, Belgium changed its standard to “manifestly ill-founded.”

62 *A. B. v. Slovakia*, no. 41784/98, 4 March 2003: The Court found a violation of Article 6(1), since domestic courts failed to assess the conditions for granting legal aid in the applicant’s case and to deliver a formal decision about refusal of legal aid as required by domestic law that could be challenged before a higher court. The “appearance of fair administration of justice” was found to be of a crucial importance in the present case. Such was the unfairness of the proceeding that it was unnecessary to examine whether the lack of legal representation caused the applicant any actual prejudice.

63 Ibid.



responsible for granting legal aid should examine the factors relevant to granting legal aid and inform the applicant of the reasons for refusing legal aid and to handle requests for legal aid with diligence (*Tabor v. Poland*, §§ 45-46⁶⁴; *Saoud v. France*, §§ 133-136)⁶⁵. The refusal of legal aid should be subject to appeal.

In summation, the following is a list of the essential elements which make up a quality and effective legal aid scheme, specifically, with respect to civil matters:

1. When the procedure or case is very complex or when legal representation is compulsory, the state may be compelled to provide for assistance from a lawyer to ensure effective access to court. Relevant factors are: (i) the complexity of the procedure, (ii) the necessity to address complicated points of law or to establish facts, involving expert evidence and the examination of witnesses, (iii) and the degree of emotional involvement that is scarcely compatible with the degree of objectivity required by advocacy in court authorities must either replace him or cause him to fulfill his obligations.
2. The complexity of a procedure or issues of facts and law are assessed on a case-by-case basis.
3. The right to free legal assistance must be practical and effective. It is not satisfied by the formal appointment of a lawyer, but the state must take positive action to ensure that the applicant effectively enjoys his or her right to free legal assistance. If a lawyer does not or is unable to fulfill their duties, the authorities must either replace him or cause him to fulfill his obligations.
4. The Court maintains two cumulative conditions to the right to free legal assistance: (i) lack of sufficient means to pay for legal assistance; (ii) the interests of justice must require that such assistance be given free.
5. It is for domestic authorities to define the financial threshold triggering the right to free legal assistance and to apply the means test. The court assesses only whether the decision on financial eligibility for legal aid is based on law and not made in an arbitrary manner.
6. It is not necessary to prove beyond all doubt that the applicant is indigent. It suffices to prove a lack of means in the absence of clear indications to the contrary.
7. If circumstances become very complex during the proceedings, a refusal of legal aid must be able to be subjected to review.
8. A failure to deliver a formal decision to a request for free legal assistance violates Art. (6)(1), because as a consequence, the applicant could not challenge any decision before a higher court.

E. Conclusion

In brief, as it relates to the right to legal aid in civil matters, the Court has consistently relied on the general criteria set out in the *Airey* case: the complexity of the procedure, complicated issues of law and fact, and the emotional involvement of the applicant. Generally speak-

64 *Tabor v. Poland*, no. 12825/02, 27 June 2006.

65 *Saoud v. France*, no. 9375/02, 9 October 2007.

ing, countries that are signatories to the Convention are required to provide some form of legal assistance to people with limited means when legal representation is compulsory—assuming sufficient interests are at stake and the case has sufficient merits. The Court has not looked at financial eligibility criteria in legal aid schemes as such, but rather at access to courts as a whole. The Court mostly reviews how the decision-making authorities exercise their discretion and appears to take a more procedural rather than a substantive approach. It assesses whether the decision of financial eligibility for legal aid is based on law and not made in an arbitrary manner.

In this connection, states have considerable freedom how to organize effective access to justice. The right to legal aid and of access to court is not absolute and may be subject to legitimate and proportional limitations. The Court only assesses whether there has been an effective and practical right of access to court. This means that states have discretion to set income levels, the level of individual contributions and eligibility requirements. There is no maximum limit to the own contribution of legal aid applicants, but it must not be arbitrary or unreasonable, and it must pursue a legitimate aim and be proportional to that aim.

It also appears that exclusion of certain types of problems from the scope of legal aid is allowed, in particular if the procedure is simple, e.g., in defamation proceedings. Depending on the interests at stake, the complexity of the procedure, complicated issues of law and fact, and the emotional involvement of the applicant, self-representation is allowed. The limited access to legal assistance must not lead to an inequality of arms between the parties.

With respect to procedural safeguards, the Court has said that a refusal of legal aid must be able to be subjected to review. A rejection of a legal aid application must be a formal decision which can be appealed.

With the foregoing in mind, though countries may have some discretion in how they can organize their legal aid schemes, the Court has been very consistent in holding that **the right to legal aid in civil matters is an “access to justice” issue, and, thus, great care must be taken by states in order to ensure that right is safeguarded.**

STORIES AND PEOPLE

Children's Right to Education is Defended

Iulia Pascu, Coordinator of The Pro Bono Network for Human Rights

A.S. is the mother of a child with multiple disabilities, Cătălin, living in Cluj county. Every day, A.S. and her boy wake up at 5.45 a.m. in order to get to school on time, in the city of Cluj-Napoca. The two get back home at 9 p.m., very tired after having changed several means of transportation. In fact, once Cătălin was taken to the Emergency Room of the County Hospital due to exhaustion from standing too much waiting for the local bus. Cătălin needs daily transportation from home to school, a daily allowance to cover the basic costs for his necessities, as well as an adequate educational program and equal treatment with the rest of the children. 13 other parents from Cluj in a similar situation, who are part of the **Association Unheard Voices** (*Voci Neauzite*), have contacted The Pro Bono Network for Human Rights to seek pro bono legal assistance.



Two lawyers from Cluj-Napoca, **Liliana - Mioara Sămăreanu** and **Emőke Marton Keresztes** have dedicated their time to this collective action and are currently representing the children's right to education in court.

The parents claim that they had previously taken every possible course of action to solve their problem, but had instead been threatened

by the school and passed over from one institution to another, without anyone assuming responsibility.

"We have followed all legal steps: we have contacted the school, we have discussed our issues at parents' meetings, we have formally addressed the school, then the superior public authorities, we have taken every step from bottom up, but it has been in vain."(Mirela Crișan, President of the Unheard Voices Association).

16 public authorities have been summoned to court, including 12 schools that are demanded to ensure free public transportation from the children's home to the school, as well as the provision of the daily allowance, retroactively for 3 years. The possibility for chil-



dren to get to school, regardless of whether they live in the city or at the country side, to have physical access to their schools, as well as to be able to buy study materials are prerequisites for an effective access to education. Without this fundamental right it is impossible to reach the goals regarding people with disabilities presented in the *National strategy regarding social inclusion and poverty reduction (2014-2020)*⁶⁶.

“The Pro Bono Network for Human Rights aims to overcome the invisible barriers to access to justice that people with disabilities face, who are often discriminated in Romania, like other vulnerable groups. The parents of children with disabilities face huge obstacles when they need to exercise their rights, including their right to education. It is easy to understand that the next logical step – to claim their rights in court – is a disproportionate effort

for these parents. The Pro Bono Network for Human Rights is quintessentially a community project which helps vulnerable people ease the burden of defending their rights and gaining access to justice.” (Dana Ududec, Legal coordinator The Pro Bono Network for Human Rights)

This is the **12th case** we have received in the past year **on disability rights**, which demonstrates that this is just the tip of the iceberg. People with disabilities represent a very vulnerable group, taking into consideration their high rate of poverty (over 70% the EU average poverty rate), and the marginalization and discrimination they face on a daily basis.⁶⁷

(...)

[The full text of the article can be accessed on the website of The Pro Bono Network for Human Rights: <http://probono.actedo.org/access-to-education-children-with-disabilities/>]

⁶⁶ *National strategy regarding social inclusion and poverty reduction (2014-2020)*, available at: http://www.mmuncii.ro/j33/images/Documente/Proiecte_in_dezbatere/2014/2014-12-29_HG_SIncluziune-Anexa1.pdf (accessed April 8th, 2016).

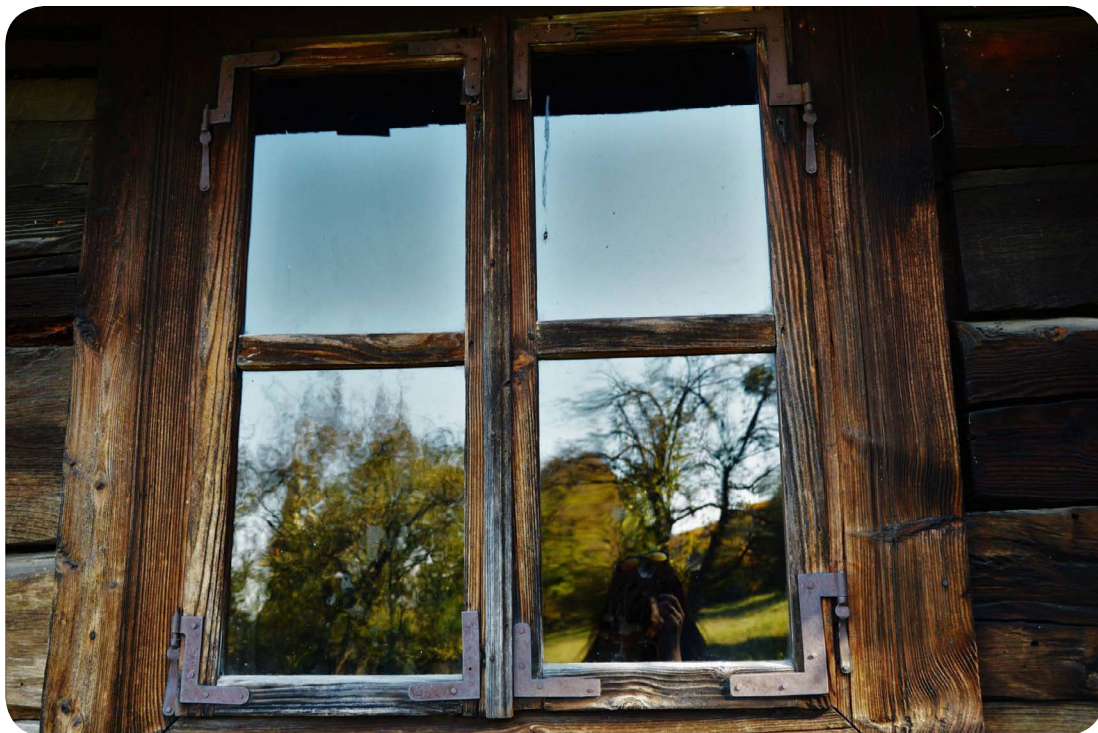
⁶⁷ *European Disability Strategy (2010-2020). A Renewed Commitment to a Barrier-Free Europe for Disabled Persons*, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:em0047&from=EN> (accessed April 8th, 2016).



The Right to Housing, a Human Right

Alexandra Columban, Communication and PR

A complex case which has recently attracted ACTEDO's attention is that of **several families in the city of Cluj-Napoca, almost 80 people in total, who are at risk of being forcefully evicted** from the houses they have been living in for many years and becoming homeless. Their precarious housing situation, coupled with the fact that almost all of them are Roma – a minority often discriminated in Romania – emphasises the general vulnerability of the group. Moreover, the lack of alternatives for these people, such as social housing, signals that local authorities have no solutions.



As soon as the case reached The Pro Bono Network for Human Rights, it was taken by the **Pro Bono Lawyer Paula Petean**, who is offering legal assistance in order for the families to de-

Photo: Andreea Hoțopan

fend their right to adequate housing. Ms Petean represents these families in their relation to local authorities and offers support with the necessary documentation meant to reduce the risk of forced evictions and to obtain the rights they are legally entitled to. What exactly motivated Ms Petean to take this case: *"I consider that the legitimate rights and interests of any individual, regardless of their ethnicity, must be defended. I have chosen to offer support to these vulnerable people because of their precarious financial situation and because they are overwhelmed by their legal problems. The solution is not easy, as it has to respond to their social and housing needs, but in the same time comply with the urbanism standards imposed by authorities."* (...)

Forced evictions in Romania, especially of Roma, have been documented by various human

rights organisations: Amnesty International, Romani CRISS, European Roma Right Centre (ERRC) and, more recently, The Common Front for Housing Rights, but this has not stopped these abuses throughout the country. Despite the fact that **3 in 4 Roma live in poverty in Romania** (compared to 1 in 4 ethnically Romanians)⁶⁸ and that this minority often faces discrimination and restricted access to various services, the **criteria for social housing allocation evidently put Roma at a disadvantage**. In addition, social housing is scarce, given that 97% of real estate in Romania is private⁶⁹. These abuses are possible, among other reasons, due to the decentralisation of public policies regarding housing, which has been transferred from the Ministry of Regional Development and Tourism to local authorities. The consequence is that the responsibility to hold local authorities accountable often falls on the shoulders of those who face forced evictions, who rarely have the means to do so.

(...)

[The full text of the article can be accessed on the website of The Pro Bono Network for Human Rights: <http://probono.actedo.org/forced-evictions/>]

The Right to a Personal Assistant of People with Disabilities – a Guarantee of the Right to Live in Community

Daniela Teodora Toma, ACTEDO volunteer and 3rd year student at the Faculty of Law, Babeş-Bolyai University, Cluj-Napoca

Mr M. is 65 and from an early age has suffered from bipolar disorder. Now, in his senior years, he was diagnosed with Parkinson's disease and mixed dementia. As of 2010, his condition has worsened and he is now unable to carry out even basic activities. His wife, Mrs M., is the one who looks after him day and night and makes sure he is properly fed. **Mr M., like many other people with disabilities in Romania, is looked after and supported by his family, but his life quality and participation in society should not fall entirely on his family's shoulders.**

According to data⁷⁰ published by the Ministry of Labour, on September 30th 2015, there were 759,019 people with disabilities in Romania, of whom 97.7% received care from their families or were living on their own. However, what is not apparent in these statistics is the way these people live their lives. The extent to which local authorities meet the needs of people like Mr M. and the obstacles for a dignified living are also not visible in these statistics.

When Mr M.'s family contacted the Commission for the Evaluation of Adult Persons with Disabilities from his county of residence for them to assess his disability degree his rights guaranteed by the law were not in fact upheld. In principle, the Commission's role is to

68 Amnesty International, *Mind the Legal Gap: Roma and the Right to Housing in Romania*, p.2, available at: <https://www.amnesty.org/en/documents/EUR39/004/2011/en/> (accessed January 20th, 2016).

69 *Ibidem*.

70 Ministry of Labour: http://www.mmuncii.ro/j33/images/buletin_statistic/dizabilitati_III2015.pdf (accessed April 4th, 2016).



assess whether the person can lead an independent life and, if the person needs constant assistance, to ensure **the right to a personal assistant**. This right is crucial for Mr M., as his wife, who is already supporting him every day, could work as a personal assistant and receive compensation for her work.

Law no. 448/2006: A **personal assistant** of a person with a severe disability is a person who looks after, offers assistance and care to the child or adult with disabilities, as stated in the recovery plan of the disabled child and the individual services plan of the disabled adult.

The first evaluation happened in 2012, when Mr M. was classified as having a *Pronounced* disability⁷¹ and received a certificate valid for 12 months. In 2015, his certificate was again valid for 12 months, but this time classified him as having a *Medium* disability. These diagnostics were issued despite the fact that Mr M. suffers from an irreversible, degenerative condition which has no known cure. **By classifying him as having a *Pronounced* or *Medium* disability, Mr M. is denied the right to a personal assistant, as only people listed as suffering from a *Severe* disability are granted this right.** In his case, the Commission did not deem his disability severe enough.

His family grew increasingly desperate and frustrated, as they did not receive any explanation for why Mr M.'s disability was deemed less severe as years went by. They did not know who to contact and how to manage on a monthly allowance of merely 39 RON. Legal remedies seemed inaccessible due to the high costs, but also as a result of the disappointment after the Commission's evaluation. However, after hearing on the radio about The Pro Bono Network for Human Rights, Mrs M. decided to try to go to court and obtain the disability classification which would reflect her husband's real needs and rights.

Pro Bono Lawyer Dora Călian, who is representing Mr M. in court through The Pro Bono Network, underlines the importance of recognising and protecting the rights of people with disabilities: *"From the point of view of the legal strategy I adopted, I can say that the case is not a difficult one. We have managed to base our defence on a series of legal texts, norms, regulations (...) so that our position is in compliance with medical standards. The behaviour of these employees is absurd, even more so given that their job tends to be repetitive. Why is it difficult to issue a disability certificate which reflects reality?"*

(...)

[The full text of the article can be accessed on the website of The Pro Bono Network for Human Rights: <http://probono.actedo.org/right-to-personal-assistant/>]

71 In Romania, disabilities are classified in three categories or degrees: 1st degree – *Severe*, 2nd degree – *Pronounced*, 3rd degree – *Medium* (Translator's note).

Involved in the community – Pro Bono Lawyers



*My pro bono involvement brings me peace of mind, both professionally and personally. For me, it means balance. Lawyering, by definition, leads to solutions and gives hope. Under which pretext then should we not offer it to those who most need it? **Att. Dora Călian***



*To offer my services pro bono in a case signalled by ACTEDO has personally brought me a lot of satisfaction. First of all, I had the opportunity to do what I love most (being a lawyer) not for my self-interest, but merely with the goal of helping people in a difficult legal situation. It is easier to contribute to society by doing what you love. Secondly, it was a challenge for me to communicate with people in a vulnerable situation out of fear I might say or do something that would offend them. I was pleasantly surprised by our communication, by their understanding and genuine generosity. Thirdly, when you do a good deed selflessly there are many unexpected rewards! **Att. Paula Petean***



*To do pro bono means to get involved in my community's problems, to have an active role in solving social problems. Lawyers have to be aware of their role as defenders of the rule of law and to contribute to the protection of the rights of vulnerable groups. **Att. Roxana Mândruțiu***



*In our opinion, lawyers have an important role in society: they have to defend not only the most successful members of society, but also the vulnerable. Offering pro bono legal assistance to individuals or non-profits is part of lawyers' responsibility. From a desire to actively contribute to consolidating our community and to the development of pro bono in Romania, the lawyers at David, Corcheș and Associates Attorneys at Law have joined ACTEDO's project The Pro Bono Network for Human Rights. **Att. Diana Corcheș of Partner David, Corcheș & Associate Attorneys at Law***



*For me, pro bono represented an attempt to set on an equal footing the rights and freedoms of vulnerable people with those of the perpetrators. **Att. Irinel Samoilă***



The First Year as a Team – the People behind The Pro Bono Network for Human Rights



Iulia Pascu, Coordinator

My work experience in The Pro Bono Network is rich and diversified. This project requires you to be good at everything, but especially to be passionate about human rights. Since the moment when we first devised the project in 2013 until the present, I feel that I have developed significantly and have learned many new skills, from financial matters to design, anti-discrimination legislation, pro bono and the European context of human rights. This project has also been a risky one: its success was based on the work of other people, lawyers willing to collaborate with us. This is why I am happy and surprised to see so many lawyers joining us in helping others. I am also happy that we have become part of the European Pro Bono Alliance and that we try to participate in the meetings of the Alliance, as well as to the European Pro Bono Forum, the most important conference in this field.

Three things I appreciated: Creativity, it is wonderful to see how something you have put down on a piece of paper becomes reality! We have a valuable team! I truly appreciate the work of my colleagues. The project implies many challenges, from direct contact with beneficiaries and their problems, to the relations with other actors and institutions. Getting bored is out of the question.



Alexandra Columban, Communication and PR

I strongly believe that the well-being and development of a society is reflected in the way it treats its most vulnerable groups. In Romania, unfortunately, these people face numerous barriers in accessing justice: lack of financial means and information, a feeling of helplessness or apathy and, many times, discrimination. This is why I consider The Pro Bono Network for Human Rights an imperative in Romania and an exercise for consolidating our civil society.

I feel honoured to be part of such a dedicated, ambitious and profoundly humane team, which offers real help to people who most need it. Moreover, throughout these two years I feel that, together with my colleagues, we have grown professionally and personally, so that now I can say I better understand Daniel Dennett's words: "The secret of happiness: Find something more important than you are and dedicate your life to it". For me, defending human rights is one of these things.



Dana Ududec, Legal coordinator

Projects that managed to reach people in need are extremely important. The human rights clearinghouse is one such project, simple and efficiently designed. For me, The Pro Bono Network for Human Rights is a project which restored my faith that the legal profession has dignified people with respect for human rights. Three of the aspects I appreciate in my work in The Pro Bono Network are: 1) I have had the priceless experience of witnessing the immediate and direct results in people's lives; 2) I have learned to find communication and mediation solutions in difficult or conflict situations; 3) I have seen a different face of the legal profession, which I would like to promote more in Romanian society.



Adela Dumbrăvan, Founding Member ACTEDO

The Pro Bono Network for Human Rights is first and foremost a dear project through which we have tried to create a bridge between two worlds that rarely meet: that of simple people in difficult situations and that of successful lawyers who are eager to get involved in social projects. I have liked many things in this project, but if I am to mention three of the things I mostly appreciated, these are:

- 1) the ability of this project to constantly surprise me: we have encountered enthusiastic lawyers, willing to do pro bono without hesitating, dynamic human rights experts full of positive energy, but also, unfortunately, human rights abuses that go beyond imagination;*
- 2) high interaction between people of different social and professional backgrounds, which required flexibility and adaptation to each situation;*
- 3) maybe most importantly the fact that I truly felt that our work has a positive impact in the lives of those who asked for our help, which only makes me more determined to continue to be part of the Pro Bono Network, whose first successful year I am convinced is only the beginning.*

Volunteers for the Pro Bono Cause



*My name is **Andreea Hoțopan** and I graduated from the Faculty of Law, Dimitrie Cantemir University Cluj-Napoca in 2015 and since then I have tried to use my knowledge in projects that focus on human rights, on defending, promoting and education the population in this field. Given the current circumstances, I believe that education and culture can help boost our social conscience. This for me has become a goal. My goal is to support legal education on an individual and general basis. My experience with ACTEDO is an opportunity to take this further. I have encountered challenges, I have enriched my legal knowledge, I have gotten closer to real cases and have understood how to approach different situations.*

All these activities have been animated by the professionalism of the people who coordinated them, the high spirits and a close collaboration. Thank you, ACTEDO!



Nima Nematollahi is an American international lawyer, with experience in corporate transactional law, financial regulatory compliance, intellectual property, and data privacy. He has worked for a law firm in the U.S. and as in-house counsel for an international non-governmental organization in Israel. Currently residing in Cluj-Napoca, Nima provides legal research and writing services to clients worldwide. His clients include law firms, NGOs and individual lawyers. Nima has written and given trainings on legal topics relating primarily to U.S. regulations governing banking and taxation laws as well as Israeli employment law. He is a member of the American Bar Association's International

Law Section and the American Society of International Law. He earned his J.D. in 2011 from Campbell University and his B.A. in 2008 from the University of North Carolina at Chapel Hill. He is admitted to the North Carolina State Bar (U.S.).

Offering my legal skills as a volunteer with ACTEDO has been a tremendously rewarding experience. In general, one of the most important reasons to do pro bono work is to provide a benefit to the community which might otherwise not be available. As lawyers, we have a particular skillset that is, to some degree, in short supply. Thus, having recently relocated to Romania, I sought out opportunities to use my professional background for the betterment of my new community. After learning about ACTEDO's admirable mission and specific needs, I realized I could be of some assistance. The ACTEDO staff are well organized, professional and a pleasure to collaborate with. I highly encourage all capable lawyers to give some of their time to this terrific organization.



Daniela Teodora Toma is a 3rd year law student at Babeş-Bolyai University. She has received an Erasmus scholarship and has studied at Utrecht University, where she attended gender equality and human rights courses, and has undergone a traineeship at the Ministry of Justice, International Cooperation Service in Civil, Family and Commercial Issues. She writes articles on human rights and anti-discrimination for Go Free Association in Cluj-Napoca and since 2012 has been participating in sessions of the European Youth Parliament.

Volunteering for ACTEDO is an experience which has helped me better understand inequality and the justice system. I have learned a great deal about procedures and applicable legislation, but also how to efficiently communicate with beneficiaries. The work of lawyers and of the project team is remarkable and has helped me understand the stringent necessity to regulate pro bono legal assistance. For me it is very important to know that I can truly contribute to cases where people need help and because of that I am grateful to The Pro Bono Network for Human Rights.



CONCLUSIONS AND RECOMMENDATIONS

The Pro Bono Network for Human Rights is presently the pro bono clearinghouse with the biggest geographical coverage in Romania, who works directly with individuals whose rights have been violated. In one year of activity, we have received over 100 requests for legal assistance and we have managed to offer support to approximately 100 beneficiaries (e.g. children with disabilities, victims of domestic violence, people suffering from chronic diseases, Roma, LGBTQI people, etc.) by collaborating efficiently with 48 Pro Bono Lawyers.

In addition, the benefits of this project have gone further than legal aid; through the activities we carried out, we managed to promote legislation regarding human rights, to raise awareness on the vulnerability of certain groups of society whose voice is seldom heard, and to promote a pro bono culture based on volunteering and passion for human rights.

The need for free legal services is nevertheless extremely high and this project covers but a small fraction of it. Therefore, access to justice for all is a challenge to the formal justice system but also to us as responsible citizens.

Recommendations:

- Given the fundamental role played by lawyers in social change and the protection of human rights, as well as the lack of a pro bono tradition in Romania, **we recommend the explicit encouragement of pro bono lawyering** – as an instrument to promote human rights – by institutions with responsibilities in the field of access to justice (Bar Associations, The National Association of Romanian Bars, the Ministry of Justice). The support should be formal, through a **declaration/ official position** introduced in the normative acts regarding the legal profession (regulations, legislation for the organization and practice of the lawyer's profession)
- Pro Bono lawyering is not specifically regulated in Romania, despite it having a basis in legislation referring to the legal profession. Therefore, **we recommend regulating pro bono activities carried out by lawyers, emphasising professional freedom and its role in defending human rights and democracy.**
- Given the central position occupied by lawyers in providing access to justice of vulnerable groups, **we recommend the National Institute for the Formation and Training of Lawyers to organise training sessions for lawyers, in the field of human rights and anti-discrimination.** The majority of lawyers who attended ACTEDO's trainings signalled a lack of professional training in this field. These training sessions should, in our opinion, have an interdisciplinary approach and contain not only legal information, but also information on the experiences of vulnerable groups.
- **We recommend the creation of legal clinics within the Faculties of Law in Romania.** In our opinion, legal clinics are vital instruments not only for facilitating access to justice, but also for students to gain practical skills and knowledge.
- During ACTEDO's work meeting with NGOs from the counties of Cluj, Bistrița-Năsăud

and Mureş most cases signalled by the NGOs were eligible *prima facie* for legal assistance through the Pro Bono Network. Nevertheless, almost no organisation contacted us to request pro bono legal assistance and many of them mentioned their lack of trust in the justice system. We consider that **it is essential to support NGOs, especially those working directly with vulnerable groups, to obtain free legal assistance through specific consultation programmes**, which can be organised by Bar Associations or the Ministry of Justice.

- **We recommend the non-refundable financing mechanisms which operate in Romania to create specific financing programmes in the field of human rights and access to justice.** It is extremely problematic that this field is almost absent from non-refundable financing programmes in Romania, given the high demand of legal information, assistance and representation for vulnerable groups.
- There is need for more **support from the local and national community (public and private) for the creation of similar clearinghouses in Romania.** This is a model that functions all over the world and the pilot clearinghouse The Pro Bono Network for Human Rights is proof that it can successfully be implemented in Romania as well, with great benefits for the community. The clearinghouse does not currently have the necessary resources for a national coverage and the requests received in one year were too many to be addressed in a short time.

METHODOLOGY

For the evaluation of The Pro Bono Network for Human Rights, we analysed the legal assistance and representation offered by the Pro Bono Lawyers throughout one year (January 1st, 2015 – January 20th, 2016), other activities we implemented between July 2014 and January 2016, as well as documents, studies and legislation.

As a method of collecting data we used: interviews (by telephone and face to face) and the analysis of documents and data in the cases received by the Pro Bono Network. In total, we interviewed 16 beneficiaries (individuals and representatives of NGOs) and 16 Pro Bono Lawyers, and we analysed 22 of the accepted cases. The interview guide was applied by the project team members and by ACTEDO volunteers. Data collection took place between March 15th and April 5th, 2016.

Indicators

For the activity of monitoring and evaluation, we took into account the following indicators:

1. Efficiency and effectiveness – has the project achieved its targeted results and objectives? What financial resources were used and how was the collaboration with the project partners?
2. Relevance – is the project relevant for human rights and access to justice, does it take into account the needs of the beneficiaries?
3. Sustainability – to what extent do the benefits of the project continue after the grant is over? Can the project be replicated?
4. Impact – what change has the project brought?





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