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ACCESS TO JUSTICE

of Vulnerable Groups in a Democratic Judicial System

Barriers, Legislative Gaps, and Solutions

Report

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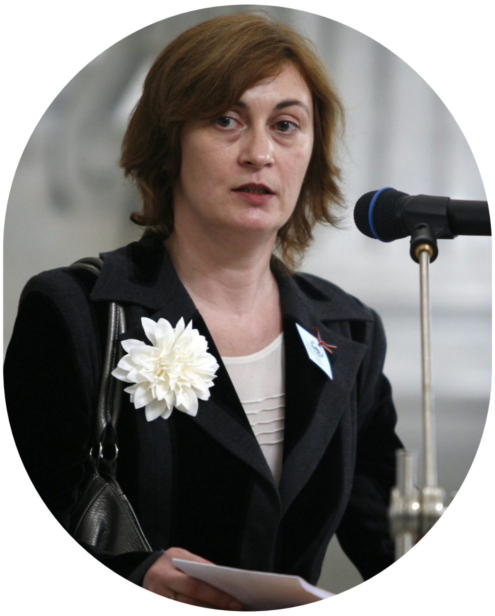

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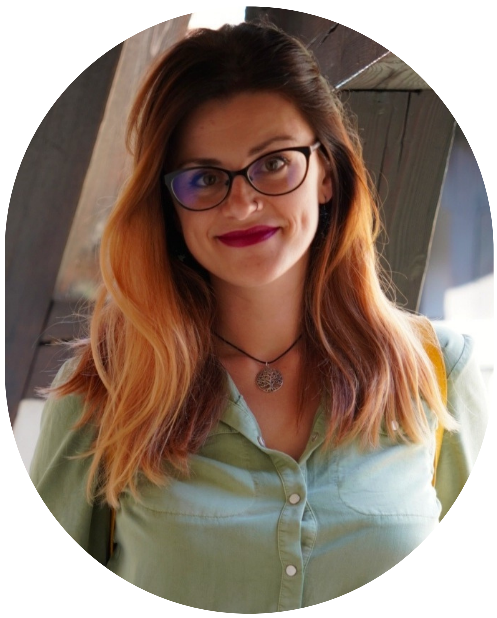

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FOREWORD

Globally, it is estimated that almost four billion people live outside the protection of the law, mostly because of poverty or because they are marginalized by society.[1] In Romania, in 2020, 35.8% of the population lived at the poverty line and at risk of social exclusion, the highest proportion in the European Union, where the average is 21.9%.[2]

Both domestic legislation and numerous international treaties call access to justice a fundamental human right. In simple terms, access to justice refers to the right of any person to approach a court and receive remedies when their rights or interests have been violated. When justice is not efficient and the principles of the rule of law are not respected, ordinary citizens, especially the vulnerable, become easily exploited, and their access to services and areas of public life – health, education, work – is made difficult. So, access to justice is not only a right in itself, but also a lever to other fundamental rights. Vulnerable people – such as people with disabilities, women victims of violence, Roma, LGBTQ+ people, children, etc. - encounter numerous barriers in accessing justice, some general, such as: the very long duration of judicial procedures and lack of knowledge of rights and the justice system, but also barriers that are specific to their identity or personal characteristics, such as: discrimination and secondary victimization[3] in the relationship with state institutions and judicial bodies, attitudes of blaming the victims and discouraging them from filing a complaint, etc.

The quality of the judicial act is generally challenged by the large number of convictions that our country receives from the European Court of Human Rights (ECHR). In 2020, Romania was convicted in 64 cases out of the 82 judged by the Court, which places it in fourth place in terms of the number of convictions, after Russia with 173 convictions (out of 185 resolved cases), Turkey with 85 convictions (out of 97 solved cases) and Ukraine with 82 convictions (out of 86 solved cases).[4]

Some of the barriers facing access to justice can be addressed by improving the legal framework, while other solutions can come in the form of developing support services at national level or national training programs for frontline workers and judicial authorities (Police, Prosecutors, courts, General Directorates of Social Assistance and Child Protection – DGASPCs, non-governmental organizations that provide support services, etc.).

This study aims to **address legal issues in the access to justice of vulnerable groups in Romania**, having as **research objectives** the identification of legislative gaps in the field and the proposal of concrete measures, including legislative changes, to improve access to justice. The study is aimed at lawyers, magistrates and other legal professionals, as well as legislators and decision makers. This research is carried out within the INTEGRIS project: Integrated support for human rights, coordinated by the Action Centre for Equality and Human Rights (ACTEDO), in partnership with the Centre for Legal Resources (CRJ),

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[1] OECD, Open Society Foundations, *Leveraging the SDGs for Inclusive Growth. Delivering Access to Justice for All*, 2016, available at https://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf (accessed on 08.08.2022)

[2] Eurostat, *One in five people in the EU at risk of poverty or social exclusion*, 15.10.2021, available at https://ec.europa.eu/eurostat/web/products-eurostat-news/-/edn-20211015-1 (accessed on 08.08.2022)

[3] Law 211/2004 regarding some measures to ensure the information, support and protection of crime victims defines secondary victimization as "trauma suffered by the victim, which does not appear as a direct result of the criminal act, but through the reaction towards the victim of the institutions and persons with which it comes into contact with" (Art. 3^4, lit. e)

[4] VeDem Just, *ECHR report: 64 convictions of Romania last year*, 02.02.2021, available at: https://vedemjust.ro/cedo2020/ (accessed on 08.08.2022).

implemented with the financial support of Active Citizens Fund Romania, program funded by Iceland, Liechtenstein and Norway through EEA Grants 2014-2021.

Both ACTEDO and CRJ are non-governmental organizations with extensive experience in providing legal assistance and representation in court to vulnerable people, victims of discrimination and/or violence, therefore in civil and criminal matters.

Since 2014, ACTEDO has implemented the *Pro Bono Network for Human Rights*, the largest pro bono legal assistance centre specialized in the field of human rights in Romania, through which people from vulnerable groups receive legal support from pro bono legal practiceyers. From the launch until now, approximately 300 beneficiaries (children with disabilities, people affected by domestic violence, people of Roma ethnicity, people with chronic diseases, LGBTQ+ people, etc.) have received legal advice and/or representation in court in cases of domestic violence, hate crimes, discrimination, harassment, non-granting of due allowances, erroneous classification in the degree of disability, etc. These results materialized despite the fact that, until now, pro bono legal services are not formally regulated and encouraged in Romania.

As for the Centre for Legal Resources (CRJ), they have intervened in numerous situations of human rights violations, such as law enforcement violence and other abuses against Roma, forced evictions of Roma, domestic violence and discrimination against LGBTQ+ people. Also, in 2003, CRJ launched the *Plea for Dignity* program, through which it periodically organizes a system of unannounced monitoring visits in institutions for people with mental disabilities. The purpose of the program is to highlight and bring to the attention of public authorities the way in which the law is applied in the field of defending and protecting the rights of people with institutionalized mental disabilities, but also to report abuses against them.

Throughout this time, ACTEDO and CRJ, as well as other civil society organizations, found that there is a significant need to provide minimum legal services, free of charge, for people belonging to vulnerable groups, given the fact that many of them cannot benefit from the public legal aid system currently existing in Romania. Currently, existing free legal aid measures, including those provided by non-governmental organizations, are insufficient in the face of increasing demand.

The study has the following **structure:** Chapter 1 addresses access to justice in national and international law and provides definitions of vulnerable groups, both legal and from sociology and social psychology. Chapter 2 analyzes the main barriers to access to justice in the civil domain, focusing in particular on public legal aid. Chapter 3 focuses on physical and sexual violence, looking at the barriers to justice faced by children and adults, especially women, victims of domestic violence and victims of crime in general. Chapter 4 addresses pro bono advocacy: gaps in its regulation in Romania and comparisons with models from other states, best practice models, as well as a proposal to regulate pro bono advocacy by amending Law 51/1995 for the organization and exercise of the legal profession. The last chapter contains conclusions and recommendations for improving access to justice for vulnerable groups in the form of an action plan.

We hope that this study will be a useful tool for law specialists and practitioners who are involved in disputes concerning people from vulnerable groups, but also for non-governmental organizations and other entities that provide legal aid. In particular, we wish legislators to find useful the final chapter, which contains recommendations for legislative changes and related measures, to improve access to justice for vulnerable groups in Romania.

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CHAPTER I

An interdisciplinary perspective on the access to justice of vulnerable groups

1.1. What is access to justice. Access to justice in national and international law

Access to justice is a fundamental human right, which allows individuals to turn to a court – or other bodies in the case of alternative dispute resolution – when their rights have been violated, in order to defend themselves, to obtain remedies and to hold the executive branch accountable.[5] Access to justice is an essential pillar of the rule of law and includes the civil, criminal and administrative fields, being not only a right in itself, but also a way to exercise other rights. It is guaranteed to both suspects and defendants, as well as victims or injured parties.

The notion of access to justice encompasses a number of other fundamental rights, such as: the right to a fair trial and the right to an effective remedy, effective access to a dispute resolution body, the right to timely resolution of disputes, the right to adequate compensation, as well as the general application of the principles relating to the efficiency and effectiveness of the judicial act. These rights are enshrined in a series of European and international normative acts, indicated in the table below. The Romanian Constitution guarantees free access to justice for all persons:

> *"(1) Any person can turn to justice for the defence of his rights, freedoms and legitimate interests.*
> *(2) No law can limit the exercise of this right.*
> *(3) The parties have the right to a fair trial and to the resolution of cases within a reasonable time."* (Article 21)

Also, Art. 47 of the Charter of Fundamental Rights of the European Union, states that

> *"Any person whose rights and freedoms guaranteed by Union law are violated has the right to an effective remedy before a court of law, in accordance with the conditions established by this article. Everyone has the right to a fair trial, publicly and within a reasonable time, before an independent and impartial court established in advance by law. Every person has the opportunity to be advised, defended and represented. Free legal assistance is granted to those who do not have sufficient resources, to the extent that it is necessary to ensure their effective access to justice".*

Level	Normative act	Right/regulated issue	Article
Council of Europe (CoE)	Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	the right to a fair trial	article 6
		The right to an effective remedy	article 13
		admissibility conditions	article 35
		binding force and execution of judgments	article 46
European Union (EU)	EU Charter of Fundamental Rights	the right to an effective appeal	article 47
		application domain	article 51
		scope and interpretation of rights and principles	article 52 (3)
	Treaty on European Union (TEU)	scope of application	article 4 (3)
		Court of Justice of the EU	article 19
United Nations Organization (UN)	UN International Covenant on Civil and Political Rights (ICCPR).	the right to effective appeal and the investigation of the appeal	article 2 (3)
		respect for fundamental rights and in crisis situations	article 4
	The Universal Declaration of human rights (UDHR) of the UN	the right to go to court when rights are violated	article 8
		the right to a fair trial	article 10

[5] European Agency for Fundamental Rights and Council of Europe, Handbook of European Law on Access to Justice, 2016, p. 16, available at:: https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2016-handbook-on-access-to-justice_ro.pdf (accessed on 12.08.2022).

Although guaranteed to all people, access to justice is often difficult for people belonging to vulnerable groups, who face additional barriers in the administration of justice and the exercise of rights. The following section elaborates on the notion of "vulnerable group", from several perspectives.

1.2. What is a vulnerable group

When we talk about categories of people, but also about individuals, we can understand vulnerability from three big perspectives:

- poverty and marginalization,
- vulnerability to discrimination
- vulnerability arising from a crime or harm suffered.

The first is a socio-economic perspective, while the other two are conceptualized in a series of normative acts.

1.2.1. Legal definitions of vulnerable groups

In the following, we highlight the official sources of law that define the notion of "vulnerable group".

First of all, in the criminal field, in art. 113 para. (2) of the **New Criminal Procedure Code**, which refers to the Protection of the injured person and the civil party, establishes a presumption of vulnerability in the case of child victims, victims who are dependent on the perpetrator of the crime, victims of terrorism, of organized crime, of human trafficking, intimate partner violence, sexual violence or exploitation, victims of hate crimes and victims affected by a crime due to prejudice or discrimination that may be related in particular to their personal characteristics, victims with disabilities and victims who have suffered considerable harm as a result of the seriousness of the crime.

At the same time, the **Victims Directive** (Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards regarding the rights, support and protection of victims of crime)[6] requires states to carry out an individual assessment of victims to identify specific protection needs, with special attention for vulnerable victims:

> *“(3) In the context of the individual assessment, particular attention is paid to victims who have suffered considerable harm as a result of the seriousness of the crime, victims affected by a crime due to prejudice or discrimination that may be related in particular to their personal characteristics, and victims who are particularly vulnerable due to their relationship with and dependence on the perpetrator, particularly victims of terrorism, organized crime, human trafficking, gender-based violence, intimate partner violence, sexual violence or exploitation, of hate crimes and victims with disabilities.*
>
> *(4) For the purposes of this Directive, child victims are presumed to have specific protection needs due to their vulnerability to secondary and repeated victimization or to intimidation and retaliation. In order to determine whether and to what extent they would benefit from the special measures provided for in articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph (1) of this article."* (Article 22)

In Article 26, the Directive explicitly names "children, victims of gender-based violence and violence in intimate relationships" as vulnerable groups to victimization and secondary and repeated victimization, as well as to intimidation and retaliation. In addition to the actual rules that have been transposed into our legislation, the Victims Directive includes in the preamble multiple explanations regarding the categories of victims and the risks to which they are exposed. We particularly mention Provisions 38, 55 and 57.[7]

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[6] For a detailed analysis of the implementation of the Victims Directive in Romania from the perspective of informing, evaluating and directing victims, as well as the other rights provided for in the Directive, we recommend the 2019 CRJ Report, *Directing, evaluating and informing victims of crimes: Romania*, available at https: https://www.crj.ro/wp-content/uploads/2019/09/VICToRIIA_Raport-national-Romania_RO.pdf and the ACTEDO 2019 report, *Victims of Crime Implementation Analysis of Rights*, available at http://actedo.org/wpcontent/uploads/2019/08/VOCIARE_National_Report_Romania_final-report.pdf.

[7] Provision 38: "People who are particularly vulnerable or who are in situations that expose them to a particularly high risk of being harmed, such as people subject to repeated intimate partner violence, victims of gender-based violence or people who are the victims other types of crimes in a Member State other than the State of citizenship or residence should receive specialist assistance and legal protection."
Provision 55: "Certain victims are extremely exposed during criminal proceedings to the risk of secondary and repeated victimization or of intimidation and retaliation by the perpetrator of the crime. Such risk may arise from the personal characteristics of the victim, the type or nature and severity of the crime. Such a risk can only be effectively identified through individual assessments, carried out in the shortest possible time. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimization or of intimidation and retaliation and what special protection measures are required."
Provision 57: "Victims of human trafficking, terrorism, organized crime, intimate partner violence, sexual violence or exploitation, gender-based violence, hate crime, victims with disabilities and child victims tend to be subjected to a high rate of secondary and repeat victimization or intimidation and retaliation. Particular attention should be paid to assessing the risk of further victimization to which victims are or are not exposed, and there should be a strong presumption that such victims will benefit from special protective measures."

As far as the civil domain is concerned, we can talk about groups vulnerable to discrimination, a phenomenon related to social exclusion and marginalization. **G.O. no. 137/ 2000 on the prevention and sanctioning of all forms of discrimination** - the main anti-discrimination law in Romania - provides in article 4 a general definition of the *disadvantaged category*:

> *"Within the scope of this ordinance, a disadvantaged category is that category of people who are either in a position of inequality in relation to the majority of citizens due to identity differences with the majority, or face a rejection and marginalization behavior."*

The definition is a broad one, including both the minority status of the discriminated person and their position in relation to the majority: in an unequal, marginalized or excluded situation. Thus, this conceptualization leaves room for studies, research and opinion polls to argue for the existence of discriminatory behaviours. Ordinance 137/2000 stipulates the criteria protected in situations of discrimination – race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, belonging to a disadvantaged category and other criteria that produce unjustified differentiation between individuals.[8] These criteria can be used to better understand vulnerable groups

1.2.2. Socio-economic perspective on vulnerability

Vulnerable groups can also be conceptualized from an economic perspective: in Romania, in 2020, 35.8% of the population lived at the poverty line and at risk of social exclusion, the highest proportion in the European Union, where the average is 21.9%.[9] Poverty disproportionately affects Roma communities: a 2016 study by the European Agency for Fundamental Rights (FRA) showed that, at EU level, 80% of Roma lived below their country's at-risk-of-poverty threshold; that one Roma in three lived in a house without running water; that one in 10 lived in a home without electricity; and that one Roma in four (27 %) and one Roma child in three (30 %) lived in a household where a family member went to bed hungry at least once in the last month.[10]

It is easy to understand that access to justice is difficult for these people: the high costs of litigation, lawyers' fees, expensive trips to court can discourage individuals from seeking legal remedies. Also, the level of understanding and knowledge of the functioning of the justice system in Romania or of the legal jargon can constitute an additional barrier for these people.

Second, vulnerability can be understood as an identity difference that exposes you to marginalization, discrimination, exclusion or even violence. According to the European Commission's Special Eurobarometer from 2019, 22% of Romanians – the highest proportion of all EU member states – believe they belong to a minority, and 16% of Romanian respondents stated that they felt discriminated against in the last 12 months. Moreover, 44% of Romanians consider discrimination based on ethnicity to be widespread, this figure rising to 60% regarding Roma. At the same time, Romanians assess as widespread discrimination based on sex (44% of respondents), sexual orientation (45%), age (49%), religion (43%) and disability (50%).[11]

As for the **Roma,** the attitudes of the majority population towards them confirm the rejection of this ethnicity. According to a representative survey from 2017, only 6% of Romanians would accept Roma as family members or relatives by alliance and only 10% as friends, and 26% of Romanians say that Roma should not come to Romania.[12] . The disproportionate use of force by the law enforcement agencies against the Roma during the pandemic and beyond has been documented by several non-governmental organisations[13], and in some cases Romania has received convictions at the ECHR..[14]

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[8] The definition of discrimination according to O.G 137/2000 is: "(1) According to this ordinance, discrimination means any difference, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, belonging to a disadvantaged category, as well as any other criterion that has the purpose or effect of restricting, removing the recognition, use or exercise, under equal conditions, of human rights and fundamental freedoms or rights recognized by law, in the political, economic, social and cultural areas or in any other areas of public life."

[9] Eurostat, *One in five people in the EU at risk of poverty or social exclusion*, 15.10.2021, available at https://ec.europa.eu/eurostat/web/products-eurostat-news/-/edn-20211015-1 (accessed on 08.08.2022)

[10] European Agency for Fundamental Rights (FRA), *Second Survey on Minorities and Discrimination in the European Union. Roma – selected results*, 2016, p. 11, available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_ro.pdf (accesat 12.08.2022).

[11] Special Eurobarometer 493 of the European Commission, *Discrimination in the European Union - Factsheets Romania -EN*, 2019, available at:: https://europa.eu/eurobarometer/surveys/detail/2251 (accessed on 12.08.2022)

[12] Kantar TNS, INSHR-EW, *Opinion survey on the Holocaust in Romania and the perception of inter-ethnic relations. Made for the National Institute for the Study of the Holocaust in Romania "Elie Wiesel"*, October 2017, slide 16, available at: https://media.hotnews.ro/media_server1/document-2017-10-20-22064790-0-sondaj-kantar-tns-raport-inshr-2017.pdf (accessed on 11.08.2022).

[13] Centre for Legal Resources (CRJ) and others, *The Roma Minority: Scapegoat in the Time of the Pandemic*, May 2021,, https://www.crj.ro/minoritatea-roma-tap-ispasitor-in-vremea-pandemiei/ (accessed on 12.08.2022).

[14] For example, in the Lingurar Case against Romania, no. 48474/14 of April 16, 2019, the ECHR decided that the Police and Gendarmerie used excessive and unjustified force to intervene in a case of theft in Pata Rât, Cluj County. ECHR decision: http://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-192466&filename=CASE%20OF%20LINGURAR%20v.%20ROMANIA.docx&logEvent=False. More details at https://www.digi24.ro/stiri/actualitate/justitie/cedo-condamna-romania-pentru-folosirea-fortei-intr-o-operatiune-ce-viza-furturi-comise-de-romi-1014667 (accesat 12.08.2022).

Hate speech is also prevalent regarding the Roma, who are often portrayed in the media as criminals or a threat to society. During the pandemic, the Roma were sometimes blamed for the spread of the Coronavirus. The ACTEDO association documented instances of racist and hateful speech during 2019-2020 and noted that it occurs at all levels of society, among the authors being former president Traian Băsescu, PSD Deputy Nicolae Bacalbașa and Political scientist and professor Vladimir Tismăneanu. Also, in the same period, out of the 43 decisions of the National Council for Combating Discrimination (CNCD) that found acts of discrimination against the Roma, 38 decisions concerned situations that contained elements of hate speech - discriminatory and offensive speech.[15]

Women and girls are disproportionately affected by domestic violence and sexual violence, including trafficking for sexual exploitation. According to an FRA survey, 28.5% of women in Romania have experienced physical or sexual violence from their partner at least once in their life. However, only 14% of the worst incidents of domestic violence in the past year were reported to the police by women in the EU. A 2019 Legal Resource Centre survey of domestic violence victims' experience with court proceedings and how they were informed of their rights, assessed and referred to support services revealed multiple issues related to victims' access to justice. In general, the victims stated that they were not properly informed by the judicial bodies about their rights, sometimes they were even discouraged by the police from filing a complaint, their needs were not properly assessed in most cases, they went through revictimization and pointed to NGOs as providing better services than state-provided assistance. Below are some of the conclusions of the study:

> *"Victims generally feel that there is no support from the state, including law enforcement and judicial authorities, as well as other institutions such as social services and child protection services, and that only NGOs help them. Most victims, after interacting with the police, mentioned that they did not know what to do or where to go, thus feeling that they had no options to escape the domestic violence situation. [...] Not infrequently, interactions with the police in particular, but sometimes also with the courts, have been reported as traumatic and there seem to be no procedures or practices to avoid subjecting victims to secondary and repeated victimization. Instead, victims were asked to recall incidents of violence on different occasions."*[16]

Victims of **sexual violence** often face attitudes of blaming the victim, which is also reflected in the high tolerance of Romanians towards sexual violence. According to a survey carried out by the European Commission in 2016, 55% of Romanians - the highest percentage in the EU (the average being 27%) - believe that rape is sometimes justifiable, in other words, that there is at least one situation, such as if the victim is drunk, had multiple sexual partners, or was wearing skimpy clothing that makes non-consensual sexual intercourse acceptable.[17]

More alarming is that sometimes tolerance towards sexual violence is seen among judicial bodies and magistrates and even in the case of children. In 2016, Romania was convicted at the ECHR on the grounds that the Romanian court interpreted the fact that an 11-year-old girl did not tell her parents that she had been raped by five men, on several occasions, as evidence that she had consented to those sexual acts. At the same time, the ECHR ruling referred to 12 similar cases in the country, where rapes of minors were judged on a case-by-case basis, despite the fact that the victims were under the legal age of consent.[18]

People with disabilities are a vulnerable group in terms of access to justice, both for people with locomotor or physical disabilities, and for those with intellectual disabilities. Globally, according to the WHO, people with physical disabilities are 1.5 times more exposed to violence than people without disabilities, and for people with intellectual disabilities, the rate rises to nearly 4.[19]

According to the European Commission's 2021 report on the efficiency of the justice system (The EU 2022 Justice Scoreboard), Romania ranks last in the EU regarding the degree of accessibility of justice for people with disabilities. Concretely, 99% of courts do not provide information accessibility for people with disabilities, and PortalJust is not accessible, and 98% of police stations are not accessible for communication.[20]

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15 *Ibidem*, p. 12.

16 Ibidem, pp. 22-23.

17 European Commission (2016), Special Eurobarometer 449 Report: Gender-based Violence, p. 65.

18 The ECHR states in the ruling: "the capacity to express valid consent on the part of a victim of sexual assault who is a minor is determined according to the particular circumstances of each individual case. In most of these cases, the victims - aged between 11 and 14 - were deemed to have consented to sexual acts with older men - including anal and oral sex - based on factors such as not telling their parents, they did not cry for help or agreed to accompany the perpetrators to the various places where the acts took place. In some cases, the discrepancies between the statements given by the victims at different stages of the procedure were also considered as an element proving their consent". ECtHR, Judgment of March 15, 2016 in the Case of M.G.C. against Romania. Available at:https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22RUM%22],%22appno%22:[%2261495/%2011%22],%22documentcollectionid2%22:[%22CHAMBER%22],%22itemid%22:[%22001-176069%22]} (accessed on 12.08.2022).

19 World Health Organization, *Violence against adults and children with disabilities*, 2013, available at https://web.archive.org/web/20131109190956/http://www.who.int/disabilities/violence/en/ (accessed on 15.08.2022).

20 European Commission, The EU 2022 Justice Scoreboard, in the Centre for Legal Resources (CRJ), *European Commission: Romania, in the last place in the accessibility of the justice system for people with disabilities*, 03.06.2022, available at: https://www.crj.ro/comisia-europeana-romania-pe-ultimul-loc-la-accesibilizarea-sistemului-de-justitie-pentru-persoanele-cu-dizabilitati/ (accessed on 12.08.2022).

The national strategy on the rights of persons with disabilities 2021-2027 highlights the difficult access to justice for persons with disabilities, captured in the following alarming figures:

- 40% of people with disabilities know how to proceed or know what their rights are when they want to address the justice system (compared to 54% of people without disabilities);
- 40% of people with disabilities manage to go through the stages of filing a complaint (compared to 60% of people without disabilities);
- 15% of people with disabilities manage to take the steps to appeal (compared to 29% people without disabilities).[21]

Last but not least, **LGBT+ people** (lesbians, gays, bisexuals, transgender people) are also a vulnerable group to discrimination and violence or hate crimes. As in the case of the Roma, hate speech against sexual minorities is observed, perpetuated by public figures, opinion leaders, politicians and authorities.[22]

According to the special Eurobarometer 437 from 2015, 42% of Romanians do not feel comfortable working with an LGB person, and 66% of Romanians would not want their son/daughter to be in a relationship with a person of the same sex.[23] Regarding transgender people in Romania, 41% of them have faced discrimination and harassment in the last 12 months because of their gender identity. However, only 4% of LGBT+ people go to the police when they are victims of hate-motivated attacks [24] – the lowest proportion in the EU – indicating a lack of trust in the authorities and the justice system, fear of re-victimisation and/or the fear of the repercussions that would follow from the public assumption of the LGBT+ identity.

The ECHR also condemned Romania for violating the rights of LGBT+ people. In the Case of M.C. and A.C. v. Romania, from 2016, the ECHR ruled that there was a failure of the authorities to take into account the homophobic motivation of a violent attack on some participants in the Pride March in Bucharest and that the decision not to initiate criminal prosecution violated the victims' rights to a trial fair. Another conviction came in the 2021 Case X and Y, where the ECHR ruled that forcing transgender people to undergo sex reassignment surgery violates privacy and personal autonomy, the lack of a clear and predictable procedure for legal recognition of gender identity gender

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Other vulnerable groups – such as children, the elderly, immigrants, ethnic minorities such as Hungarians or Jews, religious minorities – are in turn more exposed to discrimination, exclusion or violence and may encounter major difficulties in accessing justice. Some of the solutions include the transparency and simplification of legal proceedings for victims, the reduction of bureaucracy and the excessive length of court proceedings, but also the improvement of the assessment of victims' needs and specialized support services for them. The following chapters explore in detail how to improve access to justice for vulnerable groups in civil and criminal matters, including by regulating and encouraging pro bono legal services.

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[21] National strategy on the rights of persons with disabilities 2021-2027, p. 17, available at http://sgglegis.gov.ro/legislativ/docs/2021/04/wfqgkt8_6ncsv3ymp0rj.pdf (accessed on 15.08.2022).

[22] For more details, see ACTEDO, *Hate speech against Roma and LGBT+ people 2019-2020. Position paper*, 2021, available at: https://actedo.org/wp-content/uploads/2021/09/Discursul-urii-romi-si-LGBT_Document-de-pozitie_ACTEDO-2021.pdf.

[23] Special Eurobarometer 437, *Discrimination in the EU in 2015. Report*, 2015, p. 54 and p. 56, available at https://op.europa.eu/en/publication-detail/-/publication/d629b6d1-6d05-11e5-9317-01aa75ed71a1/language-en (accessed on 12.08.2022).

[24] European Agency for Fundamental Rights (FRA), Being Trans in the European Union. Comparative analysis of EU LGBT survey data, 2014, p. 25, available at https://fra.europa.eu/en/publication/2014/being-trans-eu-comparative-analysis-eu-lgbt-survey-data (accessed on 12.08.2022).

[25] The case of M.C. and A.C. against Romania, available at http://ier.gov.ro/wpcontent/uploads/cedo/MC-si-AC-impotriva-Romaniei.pdf (accessed on 12.08.2022).

[26] Ca Case X and Y v. Romania, available at https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-6910029-9279612%22]} (accessed on 12.08.2022).

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Dan-Sebastian Chertes

CHAPTER 2

Legal and administrative barriers in the access to justice of vulnerable groups in civil matters

1.1. Public legal aid

1.1.1. Critique of current regulation

As stated in art. 1 of GEO no. 51/2008 regarding public legal aid in civil matters, this is a form of assistance granted by the state that **aims** to ensure the right to a fair trial and **guarantee equal access to the act of justice**, for the realization of legitimate rights or interests through judicial means, including for the forced execution of court decisions or other enforceable titles.

The subsequent content of the normative act only proves the opposite, i.e. that the objective of guaranteeing legal access to the justice act remains, in reality, an **objective** rather than the status quo.

A clarification on the same note needs to be made. Thus, if at the time of the adoption of GEO no. 51/2008 the pecuniary thresholds provided by art. 8 of the Ordinance were 500 lei (para. 1) and 800 lei (para. 2), by Law no. 251/2011 these were reduced to 300 lei, respectively 600 lei, staying at this level for more than 10 years.

Until the date of publication of this report, there was only one legislative proposal to change these thresholds, which was definitively rejected in February 2022. The proposal increased the limits from 300 lei to 1,000 lei and from 600 lei to 2,000 lei.

The Government of Romania adopted in 2022 Decision no. 436/2022 on the approval of the Judicial System Development Strategy 2022-2025 and the related Action Plan, in the content of which reference is made (point B **Access to Justice**), among others, to "Extending citizens' access to justice, as well as to legal aid (Improving policy on court stamp duty; **optimizing access to public legal aid**)'.

In the debate of the Chamber of Deputies, there is currently a draft law[27] that aims to change the thresholds mentioned above. The project was not initiated by the Government and it is prior to the publication of the Judicial System Development Strategy mentioned above.

The intention of the changes, tacitly adopted in the Senate, is to replace the fixed value of the thresholds with a percentage value, **related to the gross minimum basic salary per country[28]**, a value that is usually updated periodically by Government decision. In the aforementioned proposal, the 300 lei threshold is replaced by the equivalent of 25% of the gross minimum basic salary per country, and the 600 lei threshold by the equivalent of 50% of the same salary.

Referring to the last normative act that changed the value of the gross minimum basic salary per country guaranteed in payment, namely H.G. no. 1071/2021[29], the latter was 2,550 lei. According to the amendment proposal mentioned above, if it were to enter into force, the thresholds below which public legal aid should be granted in full or in proportion of 50% are 637.5 lei and 1,275 lei, respectively.

The advantage of such a change depends on the fact that the thresholds will be updated without the direct and cumbersome intervention of the legislator, but through an indirect change in the value of the gross minimum basic salary.

Even in such an increase hypothesis, the established thresholds can still constitute a real obstacle to access to justice, through a case-by-case assessment of the actual costs of the process that the litigant wishes to initiate.

The solution of establishing the thresholds as a percentage value of the gross minimum basic salary per country seems to be a solution also suggested by the Constitutional Court. Thus, in its recent jurisprudence[30] in which it analysed the constitutionality of art. 8 para. 1 and 2 of GEO no. 51/2008 regarding public judicial aid in civil matters, the Court showed that the constitutionality examination of the criticized legal text had previously been done repeatedly and that "a possible correlation of the conditions for granting public legal aid with **the minimum wage in the economy**, through reporting also to the economic indicators regarding the cost of living in Romania, as the Court held in the above-mentioned jurisprudence, represent issues related to **the option of the legislator**, exceeding the jurisdiction of the constitutional court" (para. 18 of the Decision).

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[27] It is Pl-x no. 286/2022. The legislative process of the project is available at:: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=20061 (accesat 2.09.2022). The form adopted by the Senate of the amendment project is available at: http://www.cdep.ro/proiecte/2022/200/80/6/se351.pdf (accesat 2.09.2022).

[28] A similar proposal, but by reference to the net minimum wage for the economy, was also considered in the analysis of the interdisciplinary Manual on the assistance of vulnerable groups - a guide developed to support the citizen and the justice system, **Chapter VI.** Legal assistance granted by the state and legal stamp duties, p. 121, October, 2019, produced by UNBR and CRJ, available at: https://www.unbr-justa.ro/manual-indisciplinarian-privind-asistenta-grupurilor-vulnerable-elaborated-guide-to-support-the-citizen-and-the-justice-system/ (accessed 2.09.2022).

[29] Published in M.Of. no. 950 from October 5, 2021.

[30] We refer to CCR Decision no. 613 of 30.09.2021, published in M. Of. no. 621/24.06.2022.

Moreover, correlating the thresholds from art. 8 with the value of the gross minimum basic salary per country appeared to be logical from the moment of the adoption of the normative act in its initial form, considering that art. 7 retained the same reference point for establishing the maximum threshold of the amount that can constitute public legal aid in a year.

1.1.2. The involvement of UNBR and the bar associations in the issue of public legal aid

Regarding the thresholds established by GEO no. 51/2008, since the Congress of Lawyers of 2016 U.N.B.R. addressed an Appeal to the competent authorities, to adopt legislative measures necessary to ensure the effectiveness of access to Justice. In the aforementioned Appeal, the extension of public legal aid was requested by raising the ceilings mentioned above to the value of the average salary in the economy and removing the limitations retained by art. 7 of GEO no. 51/2008, regarding the cumulative value of public legal aid within one year.

In fact, the topic of public legal aid has been a recurring topic in all lawyers' congresses for the past six years, whether it was a main topic or a secondary one. However, beyond these debates, the involvement of the bar associations regarding the issue of public legal aid is minimal, at least in relation to the information they provide to litigants in the online environment.

From the analysis of the websites of the 42 bar associations[31], only six bar associations (Alba[32], Bistrița-Năsăud[33], București[34], Cluj[35], Dolj[36] and Galați[37]) contain either information related to public legal aid, or at least a model of the request for the granting of public legal aid.

Out of these six, only in the case of three (Bistrita-Năsăud, Cluj and Galați) is there detailed information on how to obtain public legal aid, and in the case of four bars (Alba, Bucharest, Cluj and Dolj) there is a model provided for the request regarding the granting of public legal aid.

If we refer to the ease with which the public can identify the information related to this subject when they access the websites of the aforementioned bar associations, only in the case of the Bistrița-Năsăud, Cluj and Galați bar associations, the litigant finds right on the main page a section called "**In the attention of litigants**", which makes it easier to identify the page dedicated to public legal aid.

The UNBR website does not provide the public with any information on how public legal aid can be accessed.

Beyond the reformist approach, by proposing legislative changes that would give the institution of public judicial aid efficiency, transforming it into one that would really help litigants, the involvement of UNBR and the component bars should also take into consideration the act of informing and supporting the litigant who wishes to access the public judicial aid institution.

A first step would involve a unified approach to the information and forms that are made available to the public on the websites of the bar associations and the UNBR, an approach that falls under the attributions of the Legal Assistance Coordination Department at the UNBR [38].

Second, the information should be **easy to access**, a desirable alternative being to mark the page dedicated to this information from the main page of the site. As seen above, this option could take the form of a notice similar to "Attention Litigants" or "Public Info".

The information on the page dedicated to public legal aid should be designed in a simple language and accessible to people without legal training, by summarizing the legal provisions, so that they do not contain unnecessary details, but only the essential information.

One way that can prove useful is to make the information section based on the **question/answer method** regarding public legal aid: "When is it granted?", "What does it consist of?", "Who can apply for it?", "What are the conditions of income?", "Where to address the application and what must it contain?" And so on.

[31] In reality, there are 41 websites, the Botoșani Bar not having a website at the time of writing this report.

[32] https://www.barou-alba.ro/asistenta-judiciara/documente-asistenta-judiciara/ (accessed 27.09.2022).

[33] https://baroul-bn.ro/frontend/web/page/in-atentia-justitiabililor (accessed 27.09.2022).

[34] https://www.baroul-bucuresti.ro/serviciul-de-asistenta-juridica5 (accessed 27.09.2022).

[35] https://www.baroul-cluj.ro/serviciul-de-asistenta-judiciara-cluj/ajutor-public-judiciar/ (accessed 27.09.2022).

[36] https://www.barouldolj.ro/index.php?show=asistenta_judiciara_din_oficiu (accessed 27.09.2022).

[37] https://baroulgalati.ro/ajutor-public-judiciar/ (accessed 27.09.2022).

[38] The attribution is provided by art. 76 lit. j) and k) from Law no. 51/1995, republished.

It is important that the answers contain all the useful information so that it is as easy as possible for the interested person to self-assess their situation, determine whether they meet the conditions for granting and, if so, complete and submit the application correctly, accompanied by all the necessary documents.

It is also important to create a subsection that contains the **application forms and declarations** that need to be completed, both in printable and editable format. These have already been approved by UNBR Council Decision no. 180/2016[39] on the approval of the Framework Regulation for the organization, operation and attributions of the legal assistance services of the bar associations, constituting annexes to it.

An optimal support hypothesis for the litigant is the one in which, in addition, graphic or video materials are created and made available that explain and guide the interested person, step by step, regarding the entire procedure and the conditions that are necessary to be fulfilled.

1.2. Extrajudicial aid

According to art. 35 para. 1 of GEO no. 51/2008 regarding public judicial aid in civil matters, assistance through a lawyer can also be **extrajudicial.**

It consists in providing consultations, formulating requests, petitions, notifications, initiating other such legal proceedings, as well as in representation before public authorities or institutions, other than judicial ones or with jurisdictional powers, in order to achieve legitimate rights or interests.

Extrajudicial assistance must lead to the provision of clear and accessible information to the applicant, in accordance with the legal provisions in force regarding the competent institutions, and, if possible, the conditions, terms and procedures provided by law for the recognition, granting or realization of the right or interest claimed by the applicant.

According to paragraph 2 of the same article, extrajudicial assistance is granted according to the provisions of Law no. 51/1995, republished.

Art. 72 of Law no. 51/1995, republished and art. 154 of the Statute of the lawyer profession details the conditions regarding the formal conditions of the request for extrajudicial assistance, the documents proving the material situation of the applicant and their declaration if they have benefited from public judicial aid in the last 12 months, in what form, for what cause and in what amount.

Given that, by reference to art. 6 lit. a) from GEO no. 51/2008, public judicial aid in the form of assistance through a lawyer can also consist of extrajudicial assistance, the conditions and limits retained by art. 7 and 8 regarding the income thresholds and the maximum annual threshold also apply in this case.

The fulfillment of the conditions for granting extrajudicial assistance to the applicant is done by the Legal Assistance Service of the bar by referring, first of all, to the articles mentioned above and later, by referring to art. 155 of the Statute of the lawyer profession, which notes that this kind of assistance is **not granted in the following situations**:

a) when the benefit brought to the applicant by providing assistance is not justified;
b) when the claim is clearly unjustified, unfounded or inadmissible;
c) in the case of foreign citizens or foreign legal entities requesting it, when their national legislation does not provide for a similar treatment for Romanian citizens;
d) when the applicant was deprived of the right to benefit from judicial assistance

The provision cited above has a somewhat similar equivalent in art. 16 of GEO no. 51/2008, which regulates situations of refusal of public legal aid granted by the court.

It is noted that the limitation retained by letter a) reproduced above, is regulated more clearly in art. 16 of GEO no. 51/2008, where public legal aid can be refused when its estimated cost is disproportionate to the value of the subject of the case.

It would be desirable for the statutory provisions to be modified in a similar sense, if not identical to art. 16 of the Ordinance. This is because it appears more coherent that the grounds for refusal to grant extrajudicial assistance do not differ from those for granting judicial assistance.

[39] The decision is available at:https://www.unbr.ro/hotararea-nr-180-din-17-decembrie-2016-a-consiliului-unbr-privind-aprobarea-regulamentului-cadru-pentru-organizarea-functionarea-si-atributiile-serviciilor-de-asistenta-judiciara-ale-barou/ (accesat 27.09.2022).

1.3. Special guardianship

According to art. 58 of the Civil Procedure Code, the special guardianship is applicable in case of emergency, if the natural person lacking the capacity to exercise civil rights has no legal representative.

In such a situation, the court, at the request of the interested party, will appoint a special curator to represent it until the appointment of the legal representative, according to the law.

Also, the court will appoint a special curator in case of conflict of interests between the legal representative and the represented or when a legal person or an entity from those provided for in art. 56 para. 2 C.pr.civ., summoned to appear in court, has no representative.

In the same sense, art. 202 para. 3 of the Civil Code establishes that, in case of procedural co-participation of a large number of plaintiffs or defendants, if the parties do not choose an attorney or do not agree on the person of the attorney, the judge will appoint a special curator, under the conditions of art. 58 para. 3 of the Civil Code., which will ensure the representation of the plaintiffs or, as the case may be, the defendants, and to whom the procedural documents will be communicated.

Even if the payment of special curators is also regulated by the Protocol between the UNBR, the Ministry of Justice and the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice, from the economy of the legal texts dedicated to this institution it appears that it cannot be qualified as a form of public legal aid.

In addition, the scope of the persons referred to by the institution of the curate does not overlap with the scope of the vulnerable groups we refer to in this report.

The granting of public legal aid independent of the material condition of the applicant

By art. 8 ind. 1 of GEO no. 51/2008, an exception was established in the granting of public legal aid, an exception aimed at eliminating the condition regarding the material condition of the applicant.

Thus, it was established that it is granted regardless of the material condition if **several requirements are cumulatively met**:

a) if a **special law** provides for the right to legal assistance or the right to free legal assistance;
b) if this right is provided by the special law as a protective measure, in consideration of **special situations**, such as minority, disability, a certain status and the like;
c) if public legal aid is requested for the defence or recognition of rights or interests **resulting from or related to the special situation** that justified the recognition, by law, of the right to legal aid or free legal aid.

The advantage of the cited norm is that it leaves to the discretion of the special legislation the inclusion of some vulnerable groups in the category of beneficiaries of legal aid.

The disadvantage, however, is the limitation of public legal aid to cases that are directly related to the exercise of the rights or interests of people from vulnerable groups, rights or interests that are related to their status as a vulnerable person.

If we analyse the legislation we referred to when we established the categories of vulnerable groups listed in our proposal for the regulation of pro bono advocacy[40], we find that they are not offered protection through the lens of public legal aid as it is regulated by art. 8 ind. 1 mentioned above.

Thus, in Law no. 292/2011 of social assistance, the only facility offered by the legislator is, according to art. 144, exemption from stamp duty of litigations having as object rights or obligations provided by the law in question. The same facility is offered in Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination (art. 27).

In addition to the stamp duty exemption, in Law no. 122/2006 regarding asylum in Romania, reference is also made to public legal aid, but not in terms of accessing it through the exception retained by art. 8 ind. 1, but through the lens of the fact that the persons to whom the law refers have **the right to be informed** about how to access it and the fact that they can access it, "under the terms of the law".

A recent amendment [41] to Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, gave effect to art. 8 ind. 1 in their case. Thus, by amending art. 25 para. 2, it was established that:

[40] See infra, Chapter 5, section 5.6. from this report.

[41] The amendment was introduced by art. 16 of Law no. 140/2022, published in M.Of. no. 500 from 20.05.2022.

"If the disabled person, regardless of age, cannot take care of their interests, they benefit from legal protection in the form of guardianship, legal advice or special guardianship or guardianship and free legal assistance under the terms of art. 8 ind. 1 of the Government Emergency Ordinance no. 51/2008 regarding public legal aid in civil matters, approved with amendments and additions by Law no. 193/2008, with subsequent amendments and additions".

Another application of art. 8 ind. 1 in the special legislation can be found in Law no. 36/2012 regarding some measures necessary for the application of some regulations and decisions of the Council of the European Union, as well as private international law instruments in the field of maintenance obligations.

This normative act retains in art. 13 that free public legal aid is granted pursuant to art. 6 and 8 ind. 1 of GEO no. 51/2008 to the following categories of creditors:

a) creditors of maintenance obligations who have **not reached the age of 18** or are in further education, but are no older than 21;

b) creditors of the maintenance obligation who are **vulnerable persons,** as defined in art. 3 lit. (f) of the 2007 Hague Convention.

According to art. 3 lit. f) from the 2007 Hague Convention, "vulnerable person" means "a person who, due to a deficiency or insufficiency of personal capacities, cannot support themselves"[42].

Therefore, another vulnerable group that is covered by the provisions of art. 8 ind. 1 of GEO no. 51/2008 is that of minors or young people up to 21 years of age and that of people who cannot support themselves, due to deficiencies or insufficiency of personal capacities, but strictly regarding disputes related to the maintenance obligation.

The reflections in this section only lead to the conclusion that the scope of art. 8 ind. 1 is extremely narrow, there being too little coverage of access to justice for people belonging to vulnerable groups.

1.4. How often is public legal aid used

In the present approach, we considered it necessary to check how much public judicial aid is used. On the website of the Ministry of Justice, the statistics accessible are reported at the national level for the period 2016-2022.

The major disadvantage of the situation presented on the mentioned website is underlined by two aspects:

- The statistics present a record of the cases registered and those resolved, without including a category for rejected/admitted cases from their total;

- The statistics are broken down by judges, courthouse and courts of appeal, as well as by matters (civil, contentious, etc.), without a section in which they are totaled at the national level, by all courts and all matters.

The advantage of the mentioned statistics allows the verification of matters less often used for accessing public legal aid, namely of the courts with fewer requests of this kind.

In a response requested from the Ministry of Justice on the access to information of public interest, it was shown that there is no national level statistics of the number of cases in which requests for public legal aid were accepted or rejected, but it is a problem that looks to be solved by developing the ECRIS system:

Referitor la cererea privind ***numărul total de cauze în care s-a admis cererea de ajutor public judiciar, fie în parte, fie în întregime***, menționăm că, momentan, rapoartele statistice disponibile referitoare la tipul soluțiilor instanțelor nu oferă o imagine completă, această problemă dorindu-se a fi rezolvată prin noua dezvoltare a sistemului ECRIS.

Regarding the request on the total number of cases where the demand for public legal aid was granted, either in full or in part, we mention that, for the time being, the statistical reports available on the different types of court solutions do not offer a complete picture, however, this problem is to be resolved through the development of the ECRIS system.

[42] The text of the Convention annexed to the Decision of the EU Council of June 9, 2011 on the approval, on behalf of the European Union, of the Hague Convention of November 23, 2007 on obtaining maintenance pensions abroad for children and other family members, available at: https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32011D0432&from=RO#d1e32-51-1 (accessed 27.09.2022).

Extract from the response of the Ministry of Justice, communicated on 7.10.2022 under no. 71971

On the other hand, from the response received from the Cluj Court of Appeal to the request to communicate to us the total number of cases with the object of requests for public legal aid from the constituency of this court, with the mention of the number of admitted and rejected requests, the court sent such a statistic, thus proving that at the level of the appeal courts such a record is operated.

From the communicated answer, which had in mind the same period of time as the one found on the website of the Ministry of Justice, it appears that, at the level of all the courts in the Cluj Court of Appeal district, the number of admitted cases is approximately twice as many as rejected.

Curtea de Apel Cluj	Număr total de cauze înregistrate	Număr de cauze admise	Număr de cauze respinse
2016	1.243	822	421
2017	1.389	807	582
2018	1.308	858	450
2019	1.207	765	442
2020	1.071	707	364
2021	1.299	930	369

Extract from the answer of the Cluj Court of Appeal, communicated on 6.10.2022 under no. 80/I.P.

Also, the total number of requests for public legal aid registered varies negligibly during the five reference years (between 1071 and 1389 per year), at first sight suggesting that, at least at the level of the Cluj Court of Appeal, the need for such public aid is constant.

The rather small variation is also maintained over the five years regarding the percentage of cases admitted/rejected, suggesting that around 2/3 of litigants applying for public legal aid meet the conditions to access it.

However, our analysis is superficial both because of the lack of more detailed, easily accessible, public statistics, and because it should be related to the total number of cases before the courts.

In addition, such a statistic does not cover the people who do not meet the conditions for formulating the request for public judicial aid and do not make such a request, knowing so, but who also give up the formulation of the legal action due to the lack of the necessary funds, an action that would have been exercised if they would have met the conditions for the granting of public legal aid or if they had benefited from pro bono assistance.[43].

Certainly, the analysis of access and accessibility of public legal aid is one that the State, through its competent bodies, should carry out. The need is also highlighted by the arguments in the next section.

Moreover, the very art. 39 of GEO 51/2008 provides that the data and information related to the granting of public legal aid are centralized, administered and updated by the Ministry of Justice.

In addition, in para. 2 it is noted that in order to prepare and update the records, the courts and the **National Union of Bars of Romania** submit to the Ministry of Justice, quarterly, statements regarding requests for the granting of public judicial aid and, respectively, extrajudicial assistance, including data regarding approval and rejection requests, replacement of lawyers, bailiffs, as well as any other information requested by the Ministry of Justice in order to fulfill its obligations according to this emergency ordinance.

Under this legal text, the aforementioned statistics should be much easier to access, even through UNBR.

[43] This is also the conclusion contained in the 2015 Activity Report of the ACTEDO pro bono network for human rights. Thus, 11 of the 16 people who turned to the help of the Network in 2015 showed that they would not have had any solution at hand for their legal problems if they had not been supported by the pro bono work of the network members. See p. 14 of the Report, available at: https://actedo.org/wp-content/uploads/2016/05/Reteaua-Pro-Bono_Raport-de-activitatie-2015.pdf (accessed 8.10.2022).

1.5. The principles of public judicial aid

In a laborious analysis regarding public legal aid, the starting point should aim at the enactment of some principles that, subsequently, can be found in the proposed or anticipated legislative amendments. Approaching the reform of public legal aid in this way, the risk of deficiencies should be minimized.

In a document [44] drawn up in 2019 by the International Bar Association (IBA)[45], 27 principles were outlined to cover the main defining[46] elements of legal aid:

- Financing, field of applicability and eligibility conditions;
- Administration of legal aid;
- Provision of legal aid.

The document defined **legal aid** [47] as cumulatively meeting the following conditions:

- Legal advice, assistance and representation,
- for persons or groups of persons who cannot afford to pay personally for legal services,
- mainly provided by lawyers or paralegals,
- for specific legal issues,
- aid financed in whole or in part by the state, and
- which includes stamp duty exemptions and other tax benefits.

Therefore, in its essence, legal aid must be public, financed by the State, at least in part.

Without fully reproducing the principles synthesized by the mentioned document, which can be an important source of inspiration for the Romanian legislator at the time of reforming this important institution, we consider it useful to emphasize some starting elements that we consider necessary to be taken into account.

1.4.1. The cost-benefit approach

The first principle retained [48] starts from a premise that seems not to have been considered by the Romanian legislator, at least not in an obvious way. Thus, it is shown that:

> *"Providing legal services through legal aid generates significant social and economic benefits. In the budgeting process, governments should estimate the social and economic costs and benefits of providing legal aid services, including taking into account the social and economic costs of **failing to provide services**."*

Therefore, it is not enough to budget a certain amount as the cost of public legal aid as long as it is not verified what are the indirect costs of not providing the service to people who really needed it, costs that can be found in health consequences, in the job performance and in the standard of living of those who are not provided with this aid.

In a recent study[49] on the cost-benefit analysis of public legal aid, **it was concluded** that the economic benefits of investing in it outweigh the costs and that supporting this type of aid can generate significant savings for the public budget, but also for society in general.

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[44] *Guidelines on Legal Aid Principles on Civil, Administrative and Family Justice Systems and its Commentary*, elaborated in 2019 by IBA Access to Justice and Legal Aid Committee and the Bar Issues Commission and available at: https://www.ibanet.org/document?id=Guide-on-legal-aid-principles-2019 (accesat 8.10.2022).

[45] IBA – The International Bar Association is a non-governmental organization, established in 1947. Current membership is over 80,000 individual international lawyers from most of the world's leading law firms and approximately 190 bar associations and law societies from over 170 countries. Details of the organization can be accessed at: https://www.ibanet.org/About-the-IBA (accesat 8.10.2022).

[46] IBA, *Guidelines on Legal Aid Principles on Civil, Administrative and Family Justice Systems and its Commentary*, 2019, p. 9.

[47] Idem, p. 13.

[48] Idem, p. 14.

[49] Developed by the International Bar Association (IBA) with the support of the World Bank, *A Tool for Justice: A Cost Benefit Analysis of Legal Aid*, september, 2019, p. 16, available at: https://www.ibanet.org/MediaHandler?id=DB027287-2352-4269-8D0F-C1446B1023BC (accessed 8.10.2022).

1.4.2. Payment for services offered and their quality

According to the second principle, even if the amount set as the budget for legal aid will always be the effect of a political decision, the amount of fees paid to those providing legal aid services **must be fair.**

Correlatively, according to the 23rd and 25th principles, lawyers who provide legal aid services must provide them in accordance with professional regulations and existing standards of ethics and quality of services provided.

Therefore, it is necessary to create a balance between the quality of the work provided and the remuneration related to it, so that there is no imbalance in any of the directions, an aspect that could affect the quality of the legal aid provided.

1.4.3. Pro bono legal services

According to the 3rd principle [50]:

> *"Professional bodies of lawyers should seek to maximize the ways in which their members can provide pro bono legal services in accordance with their culture and traditions, but governments* ***cannot rely on this to cover services****, which should be funded properly through legal aid".*

So, pro bono advocacy must be complementary and subsidiary to public legal aid, not having to and not being able to replace it, but it must exist in a sufficiently mature legal system.

1.4.4. Exemption from the payment of stamp duties

According to the 5th principle[51], it is considered that, where the conditions permit the granting of legal aid, judicial stamp duty should be automatically exempted from payment without further procedure being followed in this regard.

It is natural that, when the litigant fulfills the conditions for public legal aid, if he applies for the costs of assistance by the lawyer and the costs of stamp duty should also be borne by the state. Granting aid only in a certain form could fail to fulfill the purpose for which it was granted, namely the access to justice of the person in a disadvantaged situation.

1.4.4. Relevant eligibility criteria

A number of principles (from the 8th to the 10th) set out the relevant criteria for the granting of legal aid.

First, it is shown that (principle 8)[52]:

> *„Financial means are a relevant criterion when assessing eligibility for legal aid. Vulnerability, including lack of knowledge or ability to defend one's rights without specialist help, is also a relevant factor."*
>
> It is also considered that (principle 9)[53]:
>
> *"The following criteria are relevant in the analysis of eligibility for legal aid: the interests of justice (which in turn will be affected by the importance of the issue to the individual - analyzed objectively) - and the importance of the issue to others in society, particularly disadvantaged groups, as well as the complexity of the problem and the availability of satisfactory alternative methods of delivering justice, including alternative funding and the likelihood of success".*

However, it is considered that the criterion regarding the "interests of justice" is applied as a priority over that regarding the "likelihood of success" (principle 10)[54]:

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[50] IBA, *Guidelines on Legal Aid Principles on Civil, Administrative and Family Justice Systems and its Commentary*, 2019, p. 14.

[51] Idem, p. 15.

[52] Ibidem.

[53] Idem, p. 16.

[54] Ibidem.

*"The **interests of justice** are a more important eligibility criterion than **the likelihood of success** in legal aid in civil, administrative and family law cases. In family law matters, prospects of success will often not be relevant."*

It therefore appears that the relevant for the granting of public legal aid should be, in order, the following:

- Financial status;
- Vulnerability of the litigant, including that revealed by the lack of education;
- The interests of justice, which relate to the relevance of the case, both for the individual and for society;
- Complexity of the problem;
- Ultimately, the probability of success of the case.

We believe that the last criterion, regarding the probability of success, does not need to be adopted in our legal system, given the divergent jurisprudence of the courts related to the same legal issue, even if the courts are part of the same district of the Court of Appeal.

Initial legal counselling

A final principle that we consider important to note is the one established as the 11th principle[55]. It holds that legal aid should generally be accessible in the form of initial legal advice when there are no other reasonable sources for the litigant to access such advice.

It is important to specify that the cited study also contains the comments resulting from the analysis and debate of the 27 principles, carried out during its elaboration, comments that can constitute points of discussion in the acceptance or repudiation of the synthesized principles, according to the way in which the legal system where they are to be implemented is built and works[56].

1.5. Conclusions

The public legal aid established at the national level is far from being regulated in accordance with the purpose it should fulfil and which it proposed since art. 1 of GEO no. 51/2008 regarding public legal aid in civil matters.

Even the changes expected to enter into force, which rethink the way of establishing the thresholds that evaluate the financial situation of the litigant, do not solve at a systemic level the problem of legal aid for the groups that really need it, the vulnerable groups.

A rethinking of the public legal aid based on the principles presented in this chapter could create the premises of an institution that functions properly, that is, it really supports those for whom it was created from the beginning.

Complementary to this reform, the express regulation of pro bono advocacy could cover the gaps that the reformed public legal aid would nevertheless leave in the need for legal assistance of people from vulnerable groups, as we will see in the chapter dedicated to this topic.

[55] Ibidem.

[56] Idem, p. 9-10.

REFERENCES

UNBR, CRJ, *The interdisciplinary manual on the assistance of vulnerable groups - a guide developed to support the citizen and the justice system,* available at:https://www.unbr-justa.ro/manual-interdisciplinar-privind-asistenta-grupurilor-vulnerabile-ghid-elaborat-pentru-sprijinirea-cetateanului-si-a-sistemului-de-justitie/ (accessed 2.09.2022)

The 2015 activity report of the Pro Bono Human Rights Network of ACTEDO, available at: https://actedo.org/wp-content/uploads/2016/05/Reteaua-Pro-Bono_Raport-de-activitate-2015.pdf (accessed 8.10.2022)

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CHAPTER 3

The access to justice of certain categories of victims. Sore points

3.1. Access to justice for victims of domestic violence

3.1.1 The rights of victims of domestic violence and gaps in intervention in such cases

Romania ratified through Law no. 30/2016 the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence).

On the occasion of submitting the instrument of ratification, Romania formulated several reservations, such as the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviors mentioned in art. 33 and 34 of the Convention, respectively for:

- **psychological violence,** defined as the intentional behaviour of harming the psychological integrity of a person through coercion or threats (art. 34);
- **harassment,** defined as the intentional behaviour of repeatedly engaging in behaviour directed at a person, causing them to fear for their safety (art. 34).

The Romanian legislator decided that "psychological violence", as a form of domestic violence, does not require criminal treatment. As for the harassment described as a crime under art. 208 of the Criminal Code, it is not applicable to family violence crimes, listed in art. 199 Criminal Code. Therefore, the Romanian legislator chose a lighter form of sanctioning the acts that, from the perspective of the Convention, should be considered crimes, sticking to what the Criminal Code already contained as crimes of family violence.

The transposition of the Istanbul Convention, with reservations, was achieved through subsequent amendments to Law no. 217/2003 for preventing and combating domestic violence. Thus, art. 3 of law 217/2003, republished, broadens the definition of domestic violence within the meaning of the Convention:

Domestic violence means any inaction or intentional action of physical, sexual, psychological, economic, social, spiritual or cyber violence, which occurs in the family or domestic environment or between spouses or ex-spouses, as well as between current or former partners, regardless of whether the aggressor lives or lived with the victim.

The rights of the victim of domestic violence are described in art. 6 of the transposition law. Thus, they have the right:

a) to respect of their personality, dignity and private life;
b) to the information regarding the exercise of their rights;
c) to special protection, appropriate to their situation and needs;
d) to counselling, rehabilitation, social reintegration services, as well as to free medical assistance, under the conditions of this law;
e) free legal advice and assistance, under the law.

Family member, in the sense of Law no. 217/2003, republished, means:

- ascendants and descendants, brothers and sisters, their spouses and children, as well as persons who have become relatives by adoption;
- spouse and/or ex-spouse;
- siblings, parents and children from other relationships of the spouse or ex-spouse;
- people who have established relationships similar to those between spouses or between parents and children, current or former partners, regardless of whether they lived with the aggressor or not, the ascendants and descendants of the partner, as well as their brothers and sisters;
- the guardian or other person who exercises these rights towards the child;
- the legal representative or other person who takes care of the person with mental illness, intellectual disability or physical disability, except for those who take care of the person because they have a professional task.

Central and local public administration authorities have the obligation to ensure the exercise of the right to information of victims of domestic violence regarding:

a) institutions and non-governmental organizations that provide psychological counselling or any other forms of assistance and protection to the victim, depending on his needs;
b) the criminal prosecution body to which they can file a complaint;
c) the right to legal assistance and the institution where they can apply to exercise this right;
d) the conditions and procedure for granting free legal assistance;
e) the procedural rights of the injured person, the injured party and the civil party;
f) the conditions and procedure for granting financial compensations by the state, according to the law;
g) the measures that can be ordered by the provisional protection order and, as the case may be, by the protection order, the steps necessary for issuing them, and the court procedure.[57]

The text is deficient, in the sense that it does not explain who exactly these authorities are, however, from the reading of Chapter II which refers to institutions with powers in preventing and combating domestic violence, it can be deduced that they are the National Agency for Equal Opportunities between Women and Men, the Ministry of Labour, the Ministry of Health, the Ministry of Education, the General Directorates of Social Assistance and Child Protection, the Directorates of Social Assistance under the local councils of municipalities and cities and the Departments of Social Assistance at the level

The designation of the persons who implement the cases of domestic violence is done by the public authorities with attributions in the field, from among the following categories of professionals:

- social workers, psychologists and legal advisers or persons with social assistance duties, employees of DGASPC, social assistance departments or within non-governmental organizations or social service providers authorized for this activity;
- neighborhood police officers.

From the corroboration of art. 14 and art. 15 it follows that it is not the police workers who are at the forefront in handling cases of domestic violence, but social workers, especially social assistants. Moreover, it is the police workers who are supported by the people appointed by the local authorities.

Emergency intervention in cases of domestic violence focuses on the provision of social services through a mobile team made up of representatives of the Public Social Assistance Service, hereinafter referred to as SPAS (art. 51).

The role of the mobile team is to check the complaints and do the initial assessment, taking steps to overcome the immediate risk, consisting of:

- transportation to the nearest medical facility;
- referral to criminal investigation bodies;
- notifying the competent bodies for the issuance of a provisional protection order;
- referral to DGASPC or SPAS for hosting and application of case management for victims and aggressors (case management is provided by the domestic violence department within DGASPC).

SPAS representatives, in order to verify reports of domestic violence, have the right of access to the offices and workplaces of legal entities and to the homes of natural persons.

There is an overlap between the authorities that handle cases of domestic violence and those that do emergency intervention, the legislator not specifying exactly who the former are. Next, there is the question of how the mobile team of special workers can carry out steps to overcome the immediate risk in cases of domestic violence without the help of police workers.

3.1.2 Social services for victims of domestic violence

The social services intended for victims of domestic violence organized in a residential regime, with accommodation for a determined period, are:

- emergency reception centres (legal advice);
- recovery centres (legal advice);
- sheltered housing (legal advice).

[57] Art. 7, paragraph 2 of Law no. 217/2003, republished

The social services organized during the day are:

- counselling centres for the prevention and combating of family violence;
- information centres and population awareness;
- assistance centres for aggressors (legal advice).

All these services are established by decisions of the county and local councils, their organization can be in a public system or in a public-private partnership, with funding from local budgets, non-refundable funding or from the state budget.

As can be seen, legal advice is available to victims of domestic violence in various types of social services. Even so, it does not follow which legal entity is called to provide such services. It is true that the public administration authorities are the ones called to create the previously presented services, only that the law does not provide the mechanisms, concretely, available to them for the provision of legal advice. Therefore, it is quite possible that this will remain un attained objective.

3.1.3 Legal protection measures for victims of domestic violence

3.1.3.1 The provisional protection order

The provisional protection order regulated by Law no. 217/2003 republished, was not implemented until the date of publication of Order no. 146/December 11, 2018 of the Minister of Internal Affairs and the Minister of Labor and Social Justice regarding the manner of handling cases of domestic violence by the police.

The order contains the procedure for police intervention in cases of domestic violence, the risk assessment form, the methodology for its use, the content of the provisional protection order, the model protocol for communicating it to the victim and the aggressor, the model statement given by the victim and the statement given by the aggressor.

The intervention of the police occurs as a result of reports:

- through the unique national emergency call system (112);
- formulated in writing or orally, directly or by telephone at the headquarters of the police units, by persons involved in acts of domestic violence, persons who assist in such acts or by any person;
- ex officio.

The provisional protection order is issued by the police, who, in the exercise of their duties, find that there is an imminent risk that a person's life, physical integrity or freedom will be endangered by an act of domestic violence. The existence of imminent risk is based on the risk assessment form, which is Annex 1 to Order no. 146/December 11, 2018 of the Minister of Internal Affairs and the Minister of Labor and Social Justice regarding the manner of handling cases of domestic violence by the police.

To the extent that there is an imminent risk, the police officer issues the provisional protection order.

The provisional protection order can be issued, without the risk assessment form (the victim is objectively unable to provide information), based on:

- the evidence obtained as a result of the verification of notifications regarding domestic violence;
- evidence obtained according to the Code of Criminal Procedure when there are indications of the commission of crimes included in art. 199 (Family violence) Penal Code.

Therefore, in the situation where the facts do not have the features of a crime, the evidence follows the evidence regime according to the Code of Civil Procedure. The audio-video or photo recordings made without the consent of the persons follow the regime of evidence, as the case may be, provided by the Code of Civil Procedure or the Code of Criminal Procedure. Issuance of the provisional protection order does not preclude taking a preventive measure, to the extent that a crime has been committed that justifies such a measure.

The police officers, in order to verify reports and obtain evidence, have the right to enter the home or residence of the person, without their consent, they can use force and the means provided to enter.

Through the provisional protection order, for a period of 5 days, one or more protection measures are available:

- temporary eviction of the aggressor from the shared home, even if he is the owner of the home;
- reintegration of the victim and, as the case may be, her children into the shared home;
- obliging the aggressor to keep a certain minimum distance from the victim and from her family members, or from the residence, workplace or educational institution;
- forcing the aggressor to permanently wear an electronic surveillance system;
- obliging the aggressor to hand over his weapons to the police;
- violation of any of the ordered measures constitutes a crime and is punishable by imprisonment from one month to one year.

The obligations and prohibitions contained in the order are binding immediately upon issuance, without summons. The police can use force to enforce the provisions of the provisional protection order. The period of 5 days is calculated in hours (120 hours) from the moment the order is issued.

Confirmation and appeal of temporary protection order

The provisional protection order is submitted for confirmation to the prosecutor's office attached to the competent court in whose jurisdiction it was issued, within 24 hours of its issuance, accompanied by the risk assessment form and the evidence obtained (regardless of whether they are civil or criminal). Within 48 hours of issuing the order, the prosecutor decides on its maintenance. If they confirm, they apply an administrative resolution on the original copy of the order. Otherwise, they order the cessation of the measures with the indication of the moment at which the latter cease.

In the case of confirmation of the provisional protection order, the prosecutor submits the file to the court together with a request for the issuance of the protection order. The duration of the provisional protection order is legally extended by the duration necessary to resolve the case, while also informing the aggressor.

The provisional protection order can be contested by the aggressor in court, within 48 hours of communication. The appeal is judged with the summoning of the parties (non-appearance does not prevent the trial), with the mandatory participation of the prosecutor, with the summoning of the ascertaining body, as an emergency, in the council chamber. The decision is final.

The chapter of Law no. 217/2003 does not specifically refer to the free legal assistance of the victim, but as long as art. 36 of this chapter refers to its appropriate completion with the provisions regarding the protection order, it can be concluded that the victim has a vocation to free legal assistance.

3.1.3.2 The protection order

The protection order can be requested from the court (the court in whose jurisdiction the victim is domiciled or resides) by the victim personally or through a legal representative, by the prosecutor in the procedure described above or by representatives of the competent authority at the level of the administrative-territorial unit with duties in the protection of victims of domestic violence.

The application form for issuing the protection order is in the annex to Law no. 217/2003, republished.

From the perspective of the conditions that the victim of domestic violence must meet, compared to those related to obtaining the provisional protection order, in the case of the simple protection order, art. 38 no longer refers to "imminent risk" but only to a state of danger.

The protection order may contain:

- temporary eviction of the aggressor from the family home, even if he is the owner;
- reintegration of the victim and, as the case may be, the victim's children, into the family home;
- limiting the aggressor's use of the shared home, when it can be shared in such a way that the aggressor does not come into contact with the victim;

- accommodation/placement of the victim and, as the case may be, the children, in an assistance centre among those provided for in art. 17 of Law 217/2003;
- obliging the aggressor to keep a minimum distance from the victim, from the children or from other relatives or from the residence, workplace or educational institution;
- the ban on the aggressor to move to certain localities or areas that the victim frequents or visits periodically;
- forcing the aggressor to permanently wear an electronic surveillance device;
- prohibiting the aggressor from any contact, including by telephone, by mail or in any other way, with the victim;
- obliging the aggressor to hand over his weapons to the police;
- entrusting minor children or establishing their residence.

By the same decision, the judge can oblige the aggressor to bear the rent and/or maintenance for the temporary home where the victim, minor children or other family members live or will live due to the impossibility of staying in the family home.

The judge may also order the aggressor to undergo psychological counselling, psychotherapy or may recommend the taking of control measures, treatment or forms of care (for example, in the matter of addictions).

Also, the judge can take a control measure for compliance with the protection order, such as:

- obliging the aggressor to appear periodically, at a time interval, at the police station;
- forcing the aggressor to give information to the police about the new home, if he was evicted from the family home by order;
- periodic and/or spontaneous checks on the location of the aggressor.

The duration of the measures ordered by the protection order is determined by the judge, without being able to exceed 6 months from the date of issuing the order.

Claim settlement

The request is judged urgently, in the council chamber with the mandatory participation of the prosecutor. Summoning the parties is done according to the rules on summoning in urgent cases. However, in cases of extreme urgency, the protective order can be issued without summons to the parties, even on the same day, based on the request and the documents in the file. The resolution of the request cannot exceed 72 hours from the submission of the request (excepting the situation where a provisional protection order was previously issued). The reasons for the order are given within 48 hours of the pronouncement.

An appeal can be made against the decision that includes the order, within 3 days from the pronouncement if the parties were summoned and from the communication if they were not summoned. The appellate court can suspend the execution of the order only with the payment of a bond by the aggressor.

Legal assistance, both for the victim and for the aggressor, is **mandatory.**

Enforcement of the protection order

The protection order is executed immediately, under the supervision of the police (the police can enter the family home with the consent of the protected person). They, in exercising the duties of supervising compliance with the protection order, can make unannounced visits to the home of the injured person, can call the aggressor or the victim, can request information from neighbors, colleagues, etc.

Non-compliance with the obligations and measures contained in the protection order by the aggressor (those provided for in 38 par. (1), (4) and (5) letters a) and b) of Law no. 217/2003, republished) constitutes a crime and is punishable by imprisonment from 6 months to 5 years.

In the situation where the injured person violates the provisions of the protection order, they will be obliged to pay the expenses generated by the issuance and execution of the order.

At the expiration of the protection measures, the protected person can request a new protection order, if there are indications that, without these protection measures, their life, physical or mental integrity or freedom are endangered.

The aggressor can request the revocation of the order or the replacement of the ordered measure under certain conditions provided by art. 49 of Law no. 217/2003, republished.

Legal assistance in the procedure of issuing the protection order

As we have shown previously, one of the rights of the victim of domestic violence is the right to free legal advice and assistance, under the law (art. 6, letter e) of Law no. 217/2003, republished). Art. 7 para. 2 refers to the obligation of central and local authorities to inform the victim about:

- the right to legal assistance and the institution to which they can turn for the exercise of this right;
- conditions and procedure for granting free legal assistance;
- the conditions and procedure for granting financial compensations by the state, in accordance with the law.

Law no. 217/2003 does not contain details regarding the institution to which victims can apply for the exercise of the right to legal assistance and does not contain special rules regarding the conditions for granting free legal assistance. As art. 42 provides, in paragraphs 2 and 3, the legal assistance of both the victim and the aggressor are mandatory, we consider it to be a form of public legal aid provided by GEO no. 51/2008, namely:

Art. 8 [1]- Public legal aid is granted, according to this emergency ordinance, regardless of the financial condition of the applicant, if a special law provides for the right to legal aid or the right to free legal aid, as a protective measure, in consideration of special situations , such as minority, disability, a certain status and the like (...).

Regarding the terminology used, it is true that art. 6 of Law no. 217/2003 uses the phrase *free legal assistance*, while art. 42 uses that of legal assistance (obligatory), but as long as the purpose of the law is to provide assistance then article 81 of the Ordinance on public legal aid becomes an incident. Therefore, regardless of the income received, the recipients of the special law (Law no. 217/2003) enjoy public legal aid. This is, moreover, provided for in the Application regarding the issuance of the protection order, annexed to Law no. 217/2003, but under a different name, namely *ex officio legal assistance*.

The Istanbul Convention establishes the right to legal aid for victims of domestic violence and not for perpetrators. However, through subsequent laws transposing the Convention into domestic law, legal assistance to the aggressor is mandatory. Although the procedure before the court is a civil one, the state has the obligation, by law, to provide the aggressor with legal assistance, similar to the situations specific to the criminal procedure.

Regarding the amount of the sums granted to the lawyers appointed by the Legal Aid Services within the bar associations for the provision of legal assistance in cases of family violence, according to the tripartite Protocol concluded between the Ministry of Justice, the National Union of Bars of Romania and the Public Ministry, the appointed lawyer's fee for the establishment of the protection order is 543 Ron. We believe that the same amount is valid whether we are talking about the victim or the aggressor, the Protocol not making any specification in this regard. The same Protocol provides for the possibility of granting extrajudicial public aid for legal assistance granted to victims of family violence, the appointed lawyer's fee being 340 Ron.

Comment: the terminology used regarding the legal assistance granted to the victim, in a broad sense, must be unified and explained throughout the body of Law no. 217/2003, republished, in accordance with GEO 51/2008 on public legal aid (which, in turn, should take into account the terminology in the Codes of civil and criminal procedure, respectively). This would lead to the better understanding and accessibility of the service provided to the victim.

3.1.4 Free legal advice

As we have shown previously, this constitutes a right of the victim of domestic violence provided for by art. 6, let. e) from Law no. 217/2003, republished.

Regarding the concrete exercise of this right, art. 13, para. 1, let. h) stipulates, in the charge of the local public administration authorities, the obligation to bear from the local budget, for the cases taken over by the public social assistance services, the expenses for drawing up legal documents and for obtaining medico-legal certificates.

Also, emergency reception centres (shelters), recovery centres and protected housing provide free legal advice according to the instructions developed by the authority (art. 19, paragraph 2), in the case of shelters.

Comment: since the law does not expressly clarify the authority in question, from the corroboration of all the previously mentioned articles, it follows that the financing of the costs of legal advice is made from local budgets, be they county, city or communal, depending on the entity that establishes the respective centres. Therefore, not being a funding from the state budget, it cannot be circumscribed by the notion of public legal aid, as it is described in GEO 51/2008. If the "authority" mentioned in art. 17, para. 2 is not a central authority but a local one, it could be concluded that the methodology for providing legal advice for victims is not uniform at the national level. On the other hand, the provision of these services by legal advisers implies a change in the legislation of this profession or the contracting of legal services.

3.2 Access to justice for crime victims

3.2.1 Free legal aid for victims

The transposition of Directive 2012/29/EU establishing minimum standards regarding the rights, support and protection of crime victims was achieved through successive normative acts, the last being O.U.G. no. 24/2019, which amend Law no. 211/2004 regarding some measures to ensure information, support and protection of crime victims.

Art. 14 of Law no. 211/2004 refers to the conditions under which **free legal assistance can be granted, upon request**, namely for:

- the persons on whom an attempt was made for the crimes of murder, qualified murder, provided for in art. 188 and 189 of the Criminal Code, a crime of bodily harm, provided for in art. 194 of the Criminal Code, an intentional crime resulting in bodily harm to the victim, a crime of rape, sexual assault, sexual intercourse with a minor, sexual corruption of minors, provided for in art. 218-221 of the Criminal Code;
- the spouse, children and dependents of persons deceased by committing the crimes of murder, qualified murder, provided for in art. 188 and 189 of the Criminal Code, as well as intentional crimes that resulted in the death of the person.
- victims referred to in para. (1) if the crime was committed on the territory of Romania or, if the crime was committed outside the territory of Romania, if the victim is a Romanian citizen or a foreigner legally residing in Romania and the criminal trial is being conducted in Romania.
- victims of human trafficking (according to Law no. 678/2001 on the prevention and combating of human trafficking, a special law that references, in art. 44 paragraph 2,the rights provided by Chapter IV of Law no. 211/2004)

Free legal assistance can be granted, upon request, to victims of crimes other than those mentioned above, to the extent that the monthly income per family member of the victim is at most equal to the gross minimum basic salary at national level, established for the year in which the victim formulated the request for free legal assistance (art. 15).

Comment: therefore, the income norm established by Law no. 211/2004 for victims of other crimes is substantially higher than that provided by OG no. 51/2008, the latter having derisive, non-updated values. Even so, this vocation depends on the degree of awareness of the victims regarding this possibility, awareness that is the responsibility of the judicial bodies, including regarding the condition and procedures for granting free legal assistance (art. 4, paragraph 1)

Art. 16 refers to other conditions that the victim of the crime must meet in order to have access to free legal assistance:

- notifying the criminal investigation bodies or the court within 60 days from the date of the crime;
- if the victim was unable, physically or mentally, to notify the criminal investigation bodies, the 60-day term is calculated from the date on which the state of impossibility ended;
- for victims who are minors or placed under judicial interdiction, the notification to the criminal investigation bodies can be made by the legal representative of the minor or the person placed under interdiction.

The request for the granting of free legal assistance is submitted to the court in whose jurisdiction the victim resides. This is resolved by two judges from the Commission for granting financial compensation to victims of crimes, by conclusion, within 15 days from the date of submission. Free legal assistance is granted to each victim throughout the process, within the limit of an amount equivalent to two gross minimum basic salaries per country, established for the year in which the victim made the request for free legal assistance, the funds being made available from the state budget , through the budget of the Ministry of Justice (art. 18).

Free legal assistance can be granted by a lawyer chosen by the victim or by a lawyer appointed by the Bar, in the conditions where the victim does not have a chosen lawyer. Thus, the conclusion by which the request for free legal assistance was admitted must also include the appointment of an ex officio defense attorney according to Law no. 51/1995 for the organization and exercise of the lawyer profession, republished, with subsequent amendments and additions, and the Statute of the lawyer profession.

Victims of crimes provided for in art. 14 of Law no. 211/2004 will follow the same procedure described previously for granting the amount necessary to enforce the court decision by which civil compensation was granted to the victim of the crime. Also, non-governmental organizations operating in the field of victim protection can apply for free legal assistance or for the amount necessary to enforce the court decision on behalf of the victims, if it was signed in advance by the victim.

The same is done in the situation where, for example, the victim of domestic violence meets the income conditions provided for in art. 15.

Crimes of domestic violence are provided for by art. 199 of the Criminal Code, as follows:

> 1) If the facts provided in art. 188 (murder), art. 189 (qualified murder) and art. 193 (hitting or other violence), art. 194 (bodily injury), art. 195 (hits or injuries causing death) are committed on a family member, the special maximum of the punishment provided by the law is increased by a fourth.
>
> 2) In the case of the offenses provided for in art. 193 (hitting or other violence) and 196 (culpable bodily harm) committed against a family member, the criminal action can also be initiated ex officio. Reconciliation removes criminal liability.

From the corroboration of art. 14 and 15 of Law no. 211/2004, republished, with art. 199 of the Criminal Code, it follows that the victims of domestic violence crimes, namely the spouse, children, other dependents, have the right to free legal assistance upon request only if they are victims of murder crimes (art. 188), qualified murder (art. 189), bodily injury (art. 194).

Both the application for the grant of free legal assistance and the application for the grant of the amount necessary for enforcement are exempt from stamp duty.

3.2.1 Granting financial compensation to crime victims

Financial compensation is granted, upon request[58]:

- to persons on whom an attempt was made for the crimes of murder and qualified murder, provided for in art. 188 and 189 of the Criminal Code, the crime of bodily harm, provided for in art. 194 of the Criminal Code, an intentional crime that resulted in bodily harm to the victim, a crime of rape, sexual intercourse with a minor and sexual assault, provided for in art. 218-220 of the Criminal Code, a crime of trafficking in persons and trafficking of minors, provided for in art. 210 and 211 of the Criminal Code, a crime of terrorism, as well as any other intentional crime committed with violence;
- to the spouse, children and dependents of persons who died due to the above-mentioned crimes.

The conditions for granting compensation are the same as in the case of free legal assistance, with regard to the obligation to notify the criminal investigation bodies.

In the situation where the perpetrator is known, financial compensation is granted if:

- the victim submitted the request for financial compensation within one year, as the case may be:
    1. from the date of finality of the decision by which the criminal court pronounced the conviction or acquittal in the cases provided for in art. 16 para. (1) lit. b)-d) of the Code of Criminal Procedure and granted civil compensation or termination of the criminal process in the cases provided for in art. 16 para. (1) lit. f) and h) of the Criminal Procedure Code;
    2. from the date on which the prosecutor ordered the classification, in the cases provided for in art. 16 para. (1) lit. b), c), d), f) and h) of the Criminal Procedure Code;
- the victim was a civil party in the criminal process, except in the case where classification was ordered according to the provisions of art. 315 para. (1) lit. a) from the Criminal Procedure Code;
- the perpetrator is insolvent or disappeared;
- the victim did not obtain full compensation for the damage suffered from an insurance company.

Categories of damage for which financial compensation is granted:

- hospitalization expenses and other categories of medical expenses borne by the victim;

[58] Art.21 alin.1 lit.a) și lit.b) din Legea nr.211/2004

- material damages resulting from the destruction, degradation or rendering unusable of the victim's property or from its dispossession due to the crime (within the limit of 10 minimum gross national salaries);
- the earnings that the victim is deprived of as a result of the crime, for the victims provided for in art. 21 para. 1 let. a) from Law no. 211/2004 and
- funeral expenses;
- maintenance of which the victim is deprived due to the crime, for the victims provided for in art. 21 para. 1 let. b) from Law no. 211/2004.

The sums of money paid by the perpetrator as civil compensation and the indemnity obtained by the victim from an insurance company for the damages caused by the commission of the crime are deducted from the amount of financial compensation granted by the state to the victim. The request for financial compensation is submitted to the court in whose jurisdiction the victim resides and is resolved by two judges from the Commission for granting financial compensation to victims of crimes, established in each court.

The victim can request an advance from the financial compensation to the Commission for granting financial compensation to victims of crimes, up to an amount equivalent to 10 gross minimum national salaries established for the year in which the victim requested the advance.

The advance can be requested through the request for financial compensation or through a separate request, which can be made at any time after notifying the criminal investigation bodies or the court, if applicable, according to art. 23, and at the latest within 30 days from the date of submission of the compensation request. It is granted if the victim is in a precarious financial situation.

Comment: the transposition of Directive 2012/29/EU into national legislation obliged Romania to create access to justice for crime victims, specialized services for them as well as the granting of financial compensation to them. In order for all these things to be effective, there is a need for a uniform, adequate and timely information of these people in order to know who to turn to and what specific rights they have. In the absence of such information, the rights provided by the law may remain unattainable.

REFERENCES

UNBR, CRJ, Interdisciplinary manual on assistance to vulnerable groups - guide developed for supporting the citizen and the justice system, available at: https://www.unbr-justa.ro/manual-indisciplinarian-privind-asistenta-grupurilor-vulnerabile-ghid-elaborated-to-support-the-citizen-and-the-justice-system/, revised with regard to Chapter 2 by the original author, Georgiana Iorgulescu

The protocol regarding the establishment of the fees due to lawyers for the provision of legal assistance services in criminal matters, for the provision, within the public judicial aid system, of legal assistance services and/or representation or extrajudicial assistance, as well as for the provision of legal assistance services regarding international access to justice in civil matters and international cooperation in criminal matters, concluded between the Ministry of Justice, the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice and the National Union of Bars in Romania, available at: https://www.unbr.ro/wp-content/uploads/2022/06/173-AUT-2022_Protocol_stabilire_onorarii_Oficiu_MJ_MP_UNBR.pdf

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CHAPTER 4

Pro bono lawyering

4.1. Definition and types of pro bono legal practice

According to the definition contained in the *Guidelines on Legal Aid Principles on Civil, Administrative and Family Justice Systems and its Commentary*[59], developed in 2019 by IBA, **pro bono legal practice** – is considered to represent *the work of a lawyer, of a quality equal to that offered to paying clients, work performed without remuneration or without expecting remuneration, and which, mainly, is to benefit poor, disadvantaged or marginalized individuals or communities or the organizations that assist them*.

The above definition seems appropriate to us because it summarizes the **main characteristics** of what pro bono legal assistance should mean:

- To be a service provided by a lawyer;
- The quality of the free service should be similar to that of the service that the lawyer provides for a fee;
- Beneficiaries should be people from groups considered vulnerable or organizations that support or assist such groups.

Pro bono legal assistance regulation proposal in section 4.7. tries to take into account all these characteristics.

As will be seen below, in the analysed countries pro bono legal practice can be practiced either on an individual level, with each lawyer opting to provide legal assistance and/or representation in court on a pro bono basis in cases targeting people in vulnerable situations or marginalized communities, or, in countries with a developed pro bono culture, this type of legal assistance is practiced in an organized manner. The two main models used are:

A. **The Clearinghouse**. The notion of "clearinghouse" refers to an entity - with or without legal personality - that functions as an intermediary between those who need pro bono legal assistance services and the lawyers who want to provide them. These "clearinghouses" (or "pro bono legal assistance centres" in the adaptation of the term into the Romanian language by the ACTEDO Association, which pioneered this model in Romania) are either coordinated by non-governmental organizations, or exist within law firms. In the case of centres that operate in NGOs, the organization represents a guarantor for both parties, so that the beneficiaries of the services will be sure that they are offered a provider who wants to perform this activity, but the provider also starts from the premise that the beneficiary is in a situation where they need free legal assistance.

B. **Legal clinic.** Similar to the clearinghouse model, the legal clinic offers pro bono legal assistance to people in vulnerable situations or belonging to marginalized categories. However, legal clinics differ in that they operate inside universities, within Law Faculties, and those who provide legal assistance are students, under the coordination of a lawyer, usually a professor within the same faculty**.**

4.2. Gaps and problems of interpretation of the legislation in force

At the national level, there are no express provisions regulating pro bono advocacy. This status quo creates a state of uncertainty for both lawyers and vulnerable groups and the organizations that represent them, for the reasons we will show in this section.

The professional policy statement with reference to pro bono advocacy, adopted in 2018 by the UNBR Council,[60] did not lead to a proposal to amend the profession's legislation in the same sense, proving to be more of a statement of intent than a step forward for the regulation of pro bono legal practice.

The merit of the decision is to list what are the services that can be covered by pro bono practice:

- advising or representing individuals, communities or organizations who otherwise cannot exercise or protect their rights or do not have access to justice;
- activities that support the administration of justice or the strengthening of institutions; assisting bar associations or civic, cultural, educational and other non-governmental organizations that serve the public interest and are otherwise unable to obtain effective counsel or representation;

[59] IBA Access to Justice and Legal Aid Committee and the Bar Issues Commission, *Guidelines on Legal Aid Principles on Civil, Administrative and Family Justice Systems and its Commentary*, IBA, 2019, p. 13, available at: https://www.ibanet.org/document?id=Guide-on-legal-aid-principles-2019 (accesat 8.10.2022).

[60] The declaration was adopted by decision no. 414 of 8.12.2018, available here: https://www.unbr.ro/wp-content/uploads/2018/12/Hotarare-Consiliu-414-2018_PRO-BONO_comunicata.pdf (accessed 24.10.2022).

☐ assisting in the drafting of legislation or participating in its adoption process;

☐ monitoring elections and similar processes, where public confidence in the legislative, judicial and electoral systems may be at risk;

☐ providing legal training and support through guidance, project management and sharing of information resources;

☐ other similar activities that are carried out, in compliance with the law, to maintain the state based on rules of law.

The decision seems to be inspired by the definition mentioned above (point 4.1.) of the pro bono legal service (point 1 of the decision):

> *"1. The Council requires solicitors, practitioners and bar associations to provide pro bono legal services of **a quality equal** to that provided to paying clients. They are professional services provided by a pro bono legal practitioner, the professional activities performed without remuneration or expectation of remuneration provided, mainly, to disadvantaged or marginalized individuals or communities or to the organizations that assist them".*

From the time of the adoption of the mentioned professional policy statement until now, the provision of pro bono legal assistance has been institutionally popularized and offered by the UNBR, through bar associations only with regard to Ukrainian refugees.

In addition to the lack of legal regulation of pro bono assistance, the state of uncertainty is also created by the regulations in force, which can be interpreted to either limit or prohibit pro bono services.

One problem is the way in which the provisions of art. 30 para. 3 of Law no. 51/1995, republished, can be interpreted. The legal text notes that "lawyers can agree with clients **higher fees than those established in the table of minimum fees** adopted by the UNBR Council." In a *per a contrario* interpretation it appears that the lawyer:

 cannot establish with the client lower fees than those established in the table of minimum fees;

 cannot establish that legal assistance is offered free of charge (pro bono), given that the absence of a fee is similar to the existence of a fee lower than that provided for in the table of minimum fees.

However, the interpretation is debatable if we recall the fact that, pursuant to art. 65 let. v) from Law no. 51/1995, republished, the UNBR Council adopts *"**as a recommendation**, the table of minimum fees for the services provided according to the law of the forms of exercising the profession of lawyer."*

Keeping in mind the recommendation character of the table of minimum fees, the correlation between the two legal texts, art. 30 para. 3 and art. 65 let. v) of the Law, would lead to an interpretation in which, however, the lawyer:

 can establish with the client lower fees than those established in the table of minimum fees;

 can establish that legal assistance is offered free of charge (pro bono).

Another interpretation would ignore these legal texts, but also the fact that the fee is a right of the lawyer, which he can waive.

A second problem concerns the provisions of art. 70 para. 2 of Law no. 51/1995. These may lead to the conclusion that any pro bono legal assistance activity should be approved by the dean[61] and only under the limiting conditions noted there.

The legal text establishes that: "In exceptional cases, if the rights of the person **without material means** would be prejudiced by **the delay**, the dean of the bar may approve the granting of legal specialist assistance free of charge."

An interpretation in the sense mentioned above, however, does not take into account the fact that the legal provision is not a general one, but is contained in a special chapter, chapter V, entitled: "Judicial assistance". Therefore, it has applicability only in this context.

Art. 40 of the Law supports such an interpretation, establishing that among the lawyer's general obligations is that of providing legal assistance in the cases in which he was appointed ex officio or **free of charge** by the bar.

Therefore, in the *per a contrario* interpretation of art. 40 of the Law, the lawyer **has the right** to provide free legal assistance

[61] A se vedea decizia nr. 5 din 9.03.2022 a Decanului Baroului Cluj, prin care s-a aprobat, în temeiul art. 70 alin. 2 din Legea nr. 51/1995, acordarea de asistență juridică gratuită persoanelor refugiate din Ucraina, asistență prestată de avocații care s-au înscris benevol pe lista anexă la decizie. Decizia este disponibilă la: https://www.baroul-cluj.ro/wp-content/uploads/2022/03/decizie-decan-5-asistenta-juridica-UCRAINA.pdf (accesat 25.10.2022). În ceea ce ne privește, considerăm că din punct de vedere legal nu era necesară o astfel de decizie, activitatea fiind prestată de avocații din listă benevol, nu ca o obligație impusă de barou, prin decan.

whenever they want, the fee, established by art. 30 of the Law, mentioned above, being a right that they can waive at any time.

The UNBR's perspective on the subject of pro bono advocacy, which could be provided voluntarily by a lawyer whenever they want, was as clearly highlighted in the past and by the Methodological Norm no. 1/2016 of the Judicial Assistance Coordination Department[62]. This established the methodology for applying the provisions of art. 71 para. 2 (currently 70 par. 2) of Law no. 51/1995.

Among other things, the norm brings into question the "exclusive right of the dean of the bar to approve legal specialist assistance free of charge" noting that:

> *„ The right of appreciation of the dean of the bar is, in this matter, a constant of the regulations of the lawyer profession. It was and is meant to avoid the discretionary granting of pro-bono assistance, which is specific to other legislation and which is not regulated by Romanian legislation* ***for reasons related to the "settling" of the institutional construction*** *achieved through the application of Law no. 51/1995 which, as a whole,* ***do not recognize the valid effects of the personal "appreciations" of the lawyer*** *regarding the need for free legal assistance of the applicants. The "Guarantee" of checks and concrete assessments of the dean of the bar in ensuring free assistance through a lawyer is considered a guarantee of fair professional competition and prevents abuses!"*

Even if the methodological norm predates the 2018 professional policy statement, UNBR's view on the "institutional placement of the effects of the lawyer's personal appreciation" on the provision of pro bono legal assistance does not seem to have undergone an obvious "jurisprudential revival" in 2018.

This is because it was not clarified whether, after the declaration of professional policy, it is still necessary for the lawyer to request the consent of the dean for the provision of pro bono legal assistance.

The uncertainty surrounding the key in which the legal texts of a national legislation regarding the provision of pro bono legal assistance should be interpreted is one of the issues identified by a recent analysis of the vision that bar associations in 12 European countries have on pro bono legal practice and how they understand it to be supported.

For these reasons, as we will show in section 4.7., a legislative change aimed at regulating pro bono legal practice is required.

4.3. Regulation of pro bono legal practice in other states

Starting from a study prepared for the Pro Bono Institute[63], published in December, 2019, a study that analyses pro bono practices in 84 jurisdictions, we will in the following make a brief summary of these practices at the level of the states within the European Union [64] and at the level of the Anglo-Saxon European non-E.U. states.

4.3.1. Pro bono legal practice in states of the European Union

Austria[65]

There are no specific regulations regarding pro bono legal services, the general rules being applicable also in the case of pro bono assistance. Also, lawyers are not prohibited from publicizing their pro bono case successes or the fact that they take on pro bono cases.

Lawyers are obligated to provide legal public aid services to the extent that they are designated for this purpose by the bar associations, at the request of the courts.

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[62] Methodological norm no. 1/2016 is available at: https://unbr.ro/wp-content/uploads/2016/10/Norma-metodologica-aplicare-art-71-alin-2-final.pdf (accesat 25.10.2022).

[63] The study *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions*, was done in Decembre, 2019 by Latham & Watkins LLP for the Pro Bono Institute (https://www.probonoinst.org/about-us/) and is available at: https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/A-Survey-of-Pro-Bono-Practices-and-Opportunities-2019.pdf (accesat 25.10.2022).

[64] The cited study does not analyze all EU member states, which is why Cyprus, Croatia and Estonia will also be missing from our analysis.

[65] Latham & Watkins LLP, *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions*, p. 176-180.

In civil matters, district court judges are obligated to offer free legal advice to individuals once a week. NGOs offering pro bono legal assistance are particularly concerned with cases concerning: asylum, deportation, discrimination, racism, obtaining citizenship and obtaining jobs by foreign nationals.

Belgium[66]

Considering the constitutional enshrinement of the right to legal assistance, the initial legal consultation is free and accessible to all citizens and even residents of other citizenships, without meeting any eligibility criteria. This consultation, called first line, is however preliminary and limited in complexity, but it is guaranteed and financed by the State. However, pro bono activity is not expressly regulated.

Trainee lawyers are enrolled during their internship in the pro deo[67], assistance program, which provides state-subsidized legal aid to people who, due to their financial situation, would not be able to afford a lawyer. The Flemish Bar Council requires each trainee lawyer to deal with a minimum of five pro deo assistance cases during the traineeship period.

The pro bono activity of law firms experienced an upward trend with the establishment of branches of Anglo-American law firms, where the pro bono culture has existed for several years.

One of the important pro bono projects that takes place with the active participation of law firms and NGOs is the Brussels Pro Bono Roundtable. The Roundtable was established in 2015 by PILnet to facilitate the exchange of best practices, to serve as a meeting platform and to promote the development of a pro bono culture within law firms not active in the area. The round table meets on average once a month. Within it, NGOs present their activity and the issues for which they consider they need pro bono assistance.

The most important pro bono NGO in Belgium is Avocats Sans Frontières ("ASF"), which seeks to provide legal aid in difficult situations around the world. Most of their activities are implemented "on the ground", in vulnerable or post-conflict countries, where they provide legal assistance services, among other things, by establishing legal centres, organizing mobile court sessions and raising awareness and educating the population about their rights. According to the ASF website, a considerable number of Belgian bars financially support the initiatives of this organization.

In 2022, the Brussels Bar was awarded the PILnet Local Impact Award[68] for the best innovative pro bono legal project with an impact felt at local or national level. The winning project looked at the help that the Brussels Bar and 30 law firms provided to women judges in Afghanistan and their families to leave the country and reach safety around the world

Bulgaria[69]

Art. 38 of the Law on the Organization of Bulgarian Bar Associations establishes the freedom of any lawyer to provide free legal services to those who need assistance, but who have no or insufficient means to afford it. In addition, free legal aid can be provided to parents, friends or other lawyers.

NGOs are pro bono legal service providers in Bulgaria. Some of these offer either free legal representation to individuals in cases involving human rights or refugee rights, or free legal advice to civic organizations.

Czech Republic[70]

There are no provisions expressly regulating pro bono legal assistance. However, the Czech Lawyers' Code of Conduct encourages them to participate in projects aimed at the protection of human rights and freedoms, without being remunerated.

The main providers of pro bono legal services are NGOs, universities through their pro bono programs, or law firms that provide pro bono legal services as part of their corporate social responsibility policies.

As in most European states, lawyers do not receive CPD points for hours worked in pro bono legal assistance.

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[66] Idem, p. 192-200.

[67] For details on the particularities of pro deo assistance in Belgium, see: https://advantius.be/eng/pro-deo.html (accesat 25.10.2022).

[68] Details of the 2022 PILnet awards are available at: https://www.pilnet.org/2022-pilnet-global-awards/ (accesat 26.10.2022).

[69] Latham & Watkins LLP, *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions*, p. 201-208.

[70] Idem, p. 209-215.

Lawyers can register to be informed about pro bono opportunities at either the Czech Bar Association or the Czech Pro Bono Centre (pro bono clearinghouse – coordinated by the Pro Bono Alliance). The Pro Bono Centre registers lawyers who wish to provide pro bono advice to non-profit organizations engaged in socially responsible activities.

Denmark[71]

Historically, there has been a strong tradition of free legal aid in Scandinavia, including Denmark. This has primarily focused on providing advice to citizens with limited financial means and has traditionally been provided by lawyers on a voluntary basis.

Since 1827, Danish citizens have been able to obtain public legal aid, as long as they could provide a good reason to go to court, but did not have sufficient financial means to cover the court costs.

In addition to legal aid provided by the state, there was and is a private legal aid system where lawyers can volunteer to provide pro bono legal advice in legal aid clinics across the country.

Private legal aid has been available for legal matters that did not require going to court since 1885, when the first private legal aid office was opened in Copenhagen. This legal aid office is still active today, being the largest legal aid office in Denmark.

The main source of pro bono legal advice in Denmark is private entities and non-profit organizations. They provide advice in specific areas of law, for example refugee, trade union or tenant rights. Danish law firms increasingly include pro bono work as part of their regular work and highlight pro bono work on their websites.

Pro bono legal advice can be provided either by lawyers or by law or social work students under the guidance of a lawyer.

Finland[72]

In Finland, lawyers are not obligated to provide pro bono legal assistance. Given that there is a well-developed system of state-funded legal aid services, the need for pro bono legal services is limited.

However, the Finnish Bar Association ("FBA") encourages lawyers to engage in pro bono activities, with several law firms having various pro bono programs running.

According to a 2012 survey conducted by the FBA, 75% of the 651 attorneys who responded to it regularly offered their legal services either free of charge or at a considerable reduction in their costs.

The provision of pro bono legal services is not expressly regulated. However, according to the general view taken by lawyers, pro bono cases will be treated like any other case.

France[73]

There are no specific rules governing the provision of pro bono legal services, which are an exception to the general rule that lawyers provide legal services for a fee.

By a law of 18 December 1998, local councils of access to law (*Conseils départementals d'accès au droit* – "CDAD") were created to facilitate the access of marginalized people to legal services. Both bar associations and public authorities participate in these councils, with lawyers providing pro bono legal advice in their various locations.

Unmet pro bono legal aid needs are those of marginalized groups who are unable to obtain legal aid due to lack of information and, in some cases, language barriers. On the other hand, NGOs also need the provision of these services, given the lack of funds to afford the services of law firms.

Most pro bono initiatives come from law firms and NGOs. Pro bono programs run by law firms generally take the form of direct (individual) assistance and legal advice provided by NGO lawyers.

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[71] Latham & Watkins LLP, *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions*, p. 216-222.

[72] Idem, p. 229-234.

[73] Idem, p. 235-239.

The pro bono projects aim at activities supporting social entrepreneurship, the management of fair-trade projects or the development of local French entrepreneurship. They also have in mind the protection of international human rights, by representing people before international bodies, by assisting asylum seekers or victims of human trafficking.

Germany[74]

In general, public opinion in Germany regards the provision of pro bono legal services as a positive recent development. However, there are still legal and cultural obstacles to pro bono advocacy. It does not have such a long tradition in Germany as in most Anglo-American countries, being only on the rise in recent years.

Through the establishment of associations such as Probono e.V., the establishment of several university law clinics and the influence of Anglo-American law firms, pro bono work in the German legal sector has gained much more attention and support.

At the normative level, there are no rules that expressly regulate the provision of pro bono legal services.

Also, although the Federal Law on the Organization of the Legal Profession contains the requirement to establish a minimum fee, as well as exceptions to this rule, the prevailing opinion among German legal scholars is that the payment of a fee is not an applicable condition in pro bono cases, since the provision of free legal services does not fall within the scope of the law.

Pro bono legal services are provided by individual law firms, NGOs (often specialized in a particular legal area in line with their activities), university law clinics and law firms, most of the latter being of Anglo-American origin, often focused on advising NGOs.

Pro bono Deutschland e.V. was founded by 32 national and international law firms with the aim of supporting involvement in the field of pro bono legal advice. The association does not provide legal services, coordinate pro bono activities, or solicit pro bono cases. It is a useful resource for information about pro bono legal services in Germany and provides the opportunity to share pro bono work experiences and support the cause of pro bono legal advice.

Auridis gGmbH is a non-profit organization funded by the retail giant Aldi Süd that tries to support young families and children. Auridis deals with social projects that financially support families and early education, and offers free advice, with the help of external pro bono legal practitioners, on the legal problems of applicants.

Greece[75]

Greece does not have a tradition of providing pro bono legal services. Some Greek law firms promote their pro bono legal services, but this practice is not very widespread, as there are limitations to the services that are offered.

Instead, a pro bono culture, led by Greek and international NGOs, that focuses exclusively on the needs of refugees and migrants has grown as a result of the arrival of large numbers of migrants in Greece over the past decade.

Pro bono legal aid has therefore been dedicated to helping refugees on a range of issues, from asylum applications and family reunification applications to human rights protection. At this time, the demand for free legal services far exceeds the supply.

As in other countries, there is no express regulation of the provision of pro bono legal services.

Ireland[76]

Ireland has a long tradition of pro bono legal aid, which is why many public interest groups offer such services.

In 2009, the *Public Interest Law Alliance* (PILA) was launched, an alliance that aimed to make the laws work in favor of those most in need. PILA is supported by the *Free Legal Advice Centre* (FLAC), which was established in 1969 by a group of law students. FLAC currently operates 21 independent legal centres across the country and also provides advice in 49 Citizens Advice Centres across the country.

In 2004 the Law Society of Ireland launched the *Voluntary Assistance Scheme*, a pro bono initiative providing legal aid to charities, NGOs and civil society groups.

[74] Idem, p. 246-253.

[75] Idem, p. 254-265.

[76] Idem, p. 344-346.

There are no legal provisions that expressly regulate pro bono advocacy. Lawyers holding the barrister qualification receive CPD points for hours worked pro bono, but lawyers holding the solicitor qualification do not.

Italy[77]

Historically, pro bono legal services have not been part of the Italian legal culture or framework.

Currently, pro bono activities are limited to legal assistance provided to non-profit entities or individuals who cannot pay for legal services and to the provision of basic legal information, communicated to citizens prior to contacting a lawyer, by bar associations.

In recent years, major global law firms that have opened offices in Italy have begun to offer pro bono legal services.

Under previous legal regulations, the provision of free legal services was considered a violation of the principles of fair competition between lawyers. Following the entry into force of some changes, namely Decree-Law no. 233/2006, nicknamed the "Bersani Decree" and Decree-Law no. 1/2012, dubbed the "Liberalization Decree", which established, among other things, the principle of the parties' freedom to set the applicable fees for legal services, the professional rules are currently interpreted in the sense that they allow the provision of free legal services, if they are motivated from an ethical or social point of view.

Pro bono legal services are offered by lawyers especially to people belonging to certain "vulnerable categories" such as victims of domestic violence, minors and asylum seekers, but also to NGOs, charities and foundations.

Latvia[78]

In Latvia, pro bono legal assistance is permitted but unregulated. As a result, pro bono legal services have not developed in a systematic or structured manner. At the same time, there are a number of pro bono legal assistance opportunities involving both individuals and NGOs. As such, law firms are encouraged to provide pro bono legal services to those in need.

Despite the existence of state-funded public legal aid, there is still a gap between the people who need this assistance and those who actually meet the eligibility criteria to be granted it. Pro bono legal services are especially important for those who do not meet the criteria, as well as for NGOs.

Lithuania[79]

A strong culture of pro bono assistance has developed in the Lithuanian legal community, as certain law firms, students and NGOs provide free legal services to applicants who may not qualify for state assistance. All this contributes to strengthening access to justice in Lithuania.

There is no express regulation of the provision of pro bono legal services. As such, the same rules apply whether a lawyer provides services to a paying client or a pro bono client.

While state-subsidized legal aid is available to a fairly wide range of people who can demonstrate that they are unable to access it, there is no similar system of aid for NGOs, so pro bono legal services remain a necessity for such entities.

The main and most popular source of pro bono legal services is the Vilnius University Law Clinic, where legal assistance is provided by students of the Faculty of Law, supervised by lawyers and teaching staff. Other sources are NGOs, which offer free legal advice including by phone and online.

Luxembourg[80]

The development and provision of pro bono legal services in Luxembourg has been slow and limited, given the extensive and well-established system of state-funded legal aid. International law firms are the main participants in pro bono initiatives as part of their global strategy. Luxembourg law firms also make an important contribution to pro bono activities, given that there are few international law firms in Luxembourg.

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[77] Idem, p. 273-278.

[78] Idem, p. 279-286.

[79] Idem, p. 291-295.

[80] Idem, p. 296-303.

There are no specific rules governing the provision of pro bono legal services.

Participation in pro bono legal aid is voluntary and is not a mandatory requirement for lawyers, unlike the state-funded public legal aid situation, where lawyers cannot refuse to be appointed by the Bar.

Malta[81]

Although many Maltese law firms offer pro bono legal services, there is no entity that provides support or guidance to assist lawyers in providing this type of service. Most local firms are relatively small, and the provision of pro bono legal services has not developed in the same way as it has in the US. and the United Kingdom, with the creation of large, multinational law firms. This is partly due to the well-developed state public legal aid, but also due to the lack of links between law firms, NGOs and those who need these services.

There are no specific rules providing a legal framework for pro bono representation in Malta, but those governing the provision of legal services for consideration also apply to pro bono legal services.

In 2017, a legal clinic was officially inaugurated within the Faculty of Law at the University of Malta. Practice in this has become mandatory for all students preparing for the master's degree.

The Netherlands[82]

The Dutch Constitution and the European Convention on Human Rights provide for the right of access to justice and legal representation. As a result, people with limited financial means who seek legal advice are generally well served by a comprehensive system of state-subsidized legal services.

For this reason, pro bono legal work is limited and is less focused on poor people and more on interest groups and foundations that serve broader social needs and fight for human rights. These foundations have a greater need for pro bono legal services because they are not entitled to receive state-subsidized legal aid.

Dutch law does not allow lawyers to provide their services for an undefined fee, being obligated to charge a certain amount as a fee. However, they are allowed to provide legal services completely free of charge (pro bono). There are no other rules specifically governing the provision of pro bono legal services.

Lawyers are not obliged to provide pro bono legal services, given that the state funds the provision of legal aid. Working in the subsidized legal aid program (pro deo) or providing free legal services (pro bono) is a decision left entirely to the discretion of the lawyer.

Only a few large law firms offer pro bono legal services. They claim to the organizations to which they provide this service that it is related to a case that has demonstrable social significance or creates a judicial precedent.

There are also many non-profit organizations that offer free legal advice. These are commonly known as "Law Shops" (Rechtswinkels). Those providing advice within them are usually law students and other volunteers. These "shops" may exist as stand-alone foundations or be part of a university.

Dutch lawyers do not receive continuing education points for pro bono hours worked, but in some law firms these hours may be counted towards the "billable hours target", which target may be in relation to the award of a bonus.

Pro Bono Connect is the first public interest clearing house in the Netherlands, which acts as an intermediary between NGOs and law firms. Fifteen of the largest law firms in the Netherlands support Pro Bono Connect.

Poland[83]

The pro bono culture in Poland emerged at the beginning of the 20th century and developed throughout the Second World War. Due to the political situation during the communist regime, access to pro bono legal services became limited. After 1989,

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81 Idem, p. 304-310.

82 Idem, p. 315-319.

83 Idem, p. 330-338.

however, pro bono culture reactivated and continued to develop. In recent years, all Polish bar associations have actively promoted various pro bono programs, each attracting thousands of beneficiaries.

In January 2019, an amendment to the Law on free legal aid entered into force. Thus, it became available to any person who declares that he cannot bear the costs of legal aid. The amendment also expanded the scope of eligible persons to obtain free legal services. In addition, the new law broadens the scope of legal areas that can be covered by the free services, the only exclusion being cases related to commercial activities. The change introduces free mediation as well as a new category of help called 'civic counselling', which will be dedicated to debt problems, housing problems or social care problems. Free civic counseling will be provided by NGOs and financed from the state budget.

Although all attorneys are required to take cases ex officio, there is no legal obligation to provide pro bono legal services. However, there are a number of pro bono legal service providers in Poland: law firms, NGOs, bar associations and university legal clinics.

Currently, many law firms have programs and policies dedicated to pro bono activity. Also, the Pro Bono Centre (*Centrum Pro Bono*) annually publishes a report highlighting the activities of all law firms in Poland that collaborate with the Pro Bono Centre, respectively with the areas in which they offer pro bono consulting. There are also a number of Pro Bono programs of the Polish Bar Association, such as the "Day of Free Legal Advice".

There are no provisions that prohibit advertising pro bono successes through public notices, such as the law firm's website.

Portugal[84]

Access to justice in Portugal is a right provided by the Portuguese Constitution, and lawyers have a general duty to help protect this right. The effort to make free legal aid available to those who cannot afford it has been intensified, using a system of cooperation between the Portuguese social assistance services and the Portuguese Bar Association.

Several NGOs in Portugal offer legal assistance to the public in areas such as criminal law, consumer law and refugee law. In recent years, law firms have started their own pro bono programs, usually providing legal assistance to non-profit associations.

However, as in other states, there is no express regulation of pro bono legal practice.

The Portuguese Bar Association has a network of "Legal Advice Offices", where volunteer lawyers offer such services to anyone on any legal matter. Advice provided under this mechanism is free for interested parties, although applicable regulations limit the number of requests and duration of advice an individual can benefit from.

Portuguese law firms run pro bono programs that provide free legal assistance to charitable institutions involved in social, cultural or educational issues. And some non-profit organizations or associations offer such free services to the public.

In 2013, the first clearing house for pro bono legal services was created - "Associação Pro Bono", which puts pro bono service seekers in contact with volunteer lawyers, law students, mediators or notaries.

Slovakia[85]

In Slovakia, pro bono culture is continuously developing through associations that function as pro bono clearing houses. For example, the Pro Bono Advocacy program offers several opportunities for attorneys interested in providing pro bono services to the non-profit sector. The Legal Aid Centre (the "Centre") is a state-sponsored organization that provides this service to those in need through volunteer attorneys.

Lawyers interested in providing pro bono services can register either in the Pro Bono Advocacy program or in that of the "Centre", or they can contact certain NGOs. Also, many law firms offer pro bono services on their own initiative, having long-standing partners (e.g. local non-profit organizations) to whom they provide these services.

In May 2011, the Pontis Foundation and Slovak law firms launched the Pro Bono Advocacy program with the aim of connecting non-profit organizations with Slovak lawyers who can provide pro bono advice and services. The program is sponsored by The

[84] Idem, p. 339-343.
[85] Idem, p. 371-375.

Global Network for Public Interest Law, an international pro bono clearing house, and is supported by both the Slovak Bar Association and the Slovak Minister of Justice.

Slovenia[86]

The provision of pro bono legal services is an increasingly important part of the practice of law in Slovenia, with more and more lawyers accepting to take on pro bono cases. Traditionally, the Slovenian Bar Association organizes a pro bono day every year on December 19. However, lawyers are under no obligation to perform or report performing any pro bono legal work.

While pro bono activity has intensified in recent years, thanks to the creation of Free Legal Aid, many lawyers involved in the provision of pro bono legal services have expressed frustration at the difficulty they have in communicating with their beneficiaries, particularly because many do not have access to telephones and the Internet or are poorly educated.

Under legal regulations on lawyers' fees, they are required to charge a minimum fee for the work they do, but they can provide free legal services to the socially disadvantaged and the poor.

Pro bono legal services are most often provided by trainee lawyers. However, many attorneys in law firms agree to handle pro bono cases several times a year.

Spain[87]

In Spain, by law, the right to free legal aid is funded by the government. The beneficiaries of this aid are Spanish citizens and foreign citizens domiciled in Spain, as well as public interest foundations and associations that do not have economic resources.

Currently, there is interest from practitioners and other non-governmental organizations to provide pro bono legal assistance in an organized and qualified manner. Firms have implemented areas dedicated to pro bono work and together with other organizations want to develop this field so that it develops in an environment capable of self-regulation. Pro bono practice in Spain consists of providing legal services to charities, NGOs and marginalized people.

In 2018, 28 law firms established the "Sumando al Probono Jurídico" Foundation to contribute and increase pro bono activity. Lawyers who wish to provide pro bono legal services can do so either individually or through available clearing houses or local Bar Associations.

Each of the 83 regional Bars in Spain has its own pro bono program. These programs encourage and coordinate the provision of these services, but do not impose specific licensing or regulatory requirements on the persons who provide them.

Sweden[88]

The legal systems in Sweden and other Nordic countries are very similar, offering a fairly coherent system of subsidized legal services. Consequently, in Sweden, there was no need for lawyers to provide free legal services.

Unlike many other countries, in Sweden you do not need to be a lawyer to practice law. Therefore anyone can offer pro bono legal services. However, only members of the Swedish Bar have the right to use the professional title of lawyer (advokat), which is protected by law and reserved exclusively for members of the Bar.

Pro bono work mainly consists of various social initiatives, such as projects related to the protection of human rights, environmental and environmental impact projects, and children's rights.

One of the most well-known pro bono projects of lawyers in Sweden is "Advokatjouren", an organization initiated by the Swedish Bar Association, which offers free legal advice to the public, but which is limited to 15 minutes. During the 15 minutes, the interested person can receive advice on any legal issue, but no legal assistance consisting of drafting documents with legal content is provided.

[86] Idem, p. 376-379.

[87] Idem, p. 380-384.

[88] Idem, p. 385-388.

Lawyers and law firms engage in pro bono work on a case-by-case basis, either when contacted directly by individuals in need of assistance or by partnering with a non-profit organization for one-off or long-term projects.

Hungary[89]

Hungary's pro bono tradition dates back to the early 20th century, when the Budapest Bar stated that the provision of free legal services in Hungary is part of a "noble heritage that has become part of legal practice". During the communist period, however, the provision of pro bono legal services became increasingly difficult, so that free services largely ceased to exist.

Since the 1990s, lawyers in Hungary have slowly but surely returned to being available to provide pro bono legal services. The increasingly visible presence of international law firms in Hungary has also brought a proactive approach to the subject of pro bono advocacy. PILnet and its pro bono clearing house in Hungary have also played an important role in supporting collaboration between law firms, NGOs and charities in the country.

In 2006, several law firms drafted and signed the Pro Bono Statement, in which they affirmed their commitment to promote the public good by providing pro bono legal assistance to as many clients as possible.

4.3.2. Pro bono legal practice in the non-E.U. Anglo-Saxon states of Europe

England and Wales[90]

In England and Wales, solicitors have the same duty of care when carrying out pro bono legal work as when acting for fee-paying clients.

Barristers can provide pro bono legal services through a Legal Advice Centre. They are prohibited from receiving, directly or indirectly, any material reward for providing legal services to the Centre's clients, other than a salary paid by this Centre. These services can also be provided directly to the public, under certain conditions established by the regulations in force.

Lawyers (whether solicitors or barristers) are not required to provide a minimum number of pro bono hours. However, the UK Pro Bono Collaboration Plan includes a target of 25 hours of pro bono service on average per year. Member firms promote this objective as a reasonable minimum commitment and as a recognition of best practice in the field.

Among the providers of pro bono legal services are the *Law Centres*, which are formed by a network of forty legal offices. Each of these is an independent charity with a well-defined service area. Their work involves helping those who live in poverty or are otherwise disadvantaged and cannot afford to pay for legal services. They provide legal advice and representation in the field of social protection.

LawWorks is a charity that connects volunteer lawyers with people in need of legal advice who are not eligible for legal aid but cannot afford to pay, and with non-profit organizations that support them.

Citizens Advice offers free advice to anyone about their rights and obligations. Counseling is offered in 2,500 locations, as well as by phone, webchat, mail, email or through the organization's website.

Northern Ireland[91]

Northern Ireland has a long tradition of pro bono legal services, with a number of public interest groups providing pro bono legal services. The Bar of Northern Ireland runs a dedicated Pro Bono Office which provides free advice and representation to people who do not qualify for public legal aid or cannot afford it.

Since 2009, the PILS Project (Public Interest Litigation Support Project) has been dedicated to promoting human rights and equality between individuals by supporting public interest litigation.

In addition, since 1977, the work of the Law Centre (NI), a non-profit organization, has aimed to promote the rights to welfare and social justice through counseling, training, information dissemination, printing publications, as well as through meetings with practitioners to develop the necessary policies in the matter.

[89] Idem, p. 266-272.

[90] Idem, p. 223-228.

[91] Idem, p. 320-323.

The main non-governmental sources of pro bono resources are: the Children's Law Centre, the Citizens Advice Bureau, Law Centre NI, PILS Project, the Pro Bono Unit of the Bar of Northern Ireland and the Ulster University Law Clinic.

Scotland[92]

The need for pro bono legal advice in Scotland has increased in recent years due to the growing number of people who are not eligible for state-funded legal aid and who cannot afford to pay for it. The provision of pro bono legal services is also becoming increasingly important for law firms as a result of corporate social responsibility commitments.

The Government Legal Service for Scotland ("GLSS") is a professional community of Scottish Government lawyers. The GLSS Pro Bono Network is designed to encourage them to volunteer their legal services for the benefit of the community. Through this network, government lawyers can be involved in a number of pro bono activities, such as providing legal assistance at the local Citizens Advice Bureau, fundraising, lobbying at the local and national level, etc.

The main non-government sources of pro bono in Scotland are those that work to connect organizations providing pro bono legal services with individuals or NGOs who request them. Some of these are: LawWorks Scotland, Citizens Advice Scotland, Inspiring Scotland and the Faculty of Advocates Free Legal Services Unit.

4.4. Summary of the regulation of pro bono legal practice in other states

The previously analyzed European states did not expressly regulate pro bono legal practice. However, this type of activity is, at the European level, either on an upward trend, or there is already a well-established pro bono culture.

As seen in many of the states, the resources of pro bono legal services are both lawyers, directly or through services organized by bar associations, and NGOs working with people from vulnerable categories or whose aim is to facilitate contact between the lawyer and the beneficiary.

Where pro bono legal services are quantitatively limited or there is no demand for them, the explanation lies in the fact that the state in question has a very well-established public legal aid system, which thus renders pro bono services useless. However, even in such situations certain pro bono legal services are still present.

The premise from which pro bono practice starts, i.e. a voluntary service provided for the public good, also justifies the lack of a legal obligation to provide pro bono legal services in all the analyzed states, as well as the lack of continuous professional training points for this type of activity.

As we will argue in the following (section 4.6.) in Romania it is necessary to regulate pro bono legal practice.

4.4. Best practices in pro bono legal practice

From the analysis of the approach to the subject of pro bono legal assistance by European states, several good practice suggestions can be synthesized, such as:

- ☐ the annual organization of an event titled "Free Legal Consultation Day"[93], a day for lawyers to provide such services to interested persons;
- ☐ UNBR taking over at an institutional level the celebration of the European pro bono week, by organizing conferences to popularize among lawyers the need for such services, namely the information on vulnerable groups and the NGOs that need them, inviting such entities to these events;
- ☐ Permanent organization of Pro Bono Assistance Centres by bar associations, either only with the support of volunteer lawyers, or in collaboration with law faculties and student volunteers within them, as well as with local NGOs;
- ☐ Active support by bar associations (either logistically or financially) of pro bono clearinghouses. The model[94] is adopted, as we have shown previously, at the level of several European countries, including the Czech Republic, Slovakia or Hungary.

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[92] Idem, p. 359-363.

[93] Example taken from the practice of Polish lawyers.

[94] See *European Bars and Pro Bono*, p. 7, available at: https://www.pilnet.org/wp-content/uploads/2021/11/A11671_European_Bars_and_Pro_Bono_Booklet_V2.pdf (accessed 25.10.2022).

☐ Establishment by the bar associations of annual awards for the recognition of pro bono activity. A model[95] that can be used is that of the Paris Bar which organizes, since 2011, the Pro Bono Trophies, an event in which Parisian lawyers who have provided pro bono assistance are awarded. In the same sense, there are awards given in Poland (Crystal Heart Award) and the Czech Republic (Pro Bono Award).

These are just a few examples of good practices that could be adopted at the national level.

4.5. Why is there a need for a regulation of pro bono legal practice in Romania

In a democratic, civilized society of the 21st century, the regulation of pro bono legal assistance, through which lawyers can support people from vulnerable categories, should be a priority.

The *European Bars and Pro Bono Report* [96], published in 2021 by PILnet , which analyzes how different bars in 12 European countries support pro bono work, states that pro bono assistance facilitates the mobilization of the legal services community in support of the most vulnerable members of society[97]. In addition, pro bono work is an important support for non-governmental organizations

Moreover, in the introduction to the study on pro bono practices in 84 jurisdictions[98] it is noted that:

> *"Access to justice is a fundamental human right and one that pro bono lawyers in every jurisdiction must diligently protect and uphold. Access to justice is essential for the poor peoples of the world, those who routinely depend on support for many of their basic needs (food, housing, heating, etc.), and access to justice should be seen as equally important, being fundamental to any person. Furthermore, access to justice without adequate legal aid puts the claimant at an immediate disadvantage. Pro bono lawyers can do so much to correct this imbalance."*

In a study carried out in 2015, in Romania [99], 73 organizations in the country that work with vulnerable groups were surveyed. Of these, 32 responded. 24 of the 32 showed that they could not respond to the need for legal assistance of the victims in all cases where it was necessary. The impossibility was primarily due to the lack of funds.[100]. The responding organizations showed that there is an unmet need for legal services to support people from vulnerable groups and NGOs.[101]

As I have shown previously, in Romania, public legal aid does not cover the needs of vulnerable groups, whatever the situation that puts them in this position.

Also, pro bono legal practice was, until recently, in a shadow cone, as it was equated with free legal assistance, which is mandatorily approved by the bar, through the dean.

The European systems do not have an express regulation of the former, either because the legal public aid system is so well developed that it covers, as fully as possible, the needs of those who turn to it and make the need for additional pro bono support almost unnecessary, or because the interpretations of the existing regulations do not lead to an uncertainty regarding the permissibility of providing pro bono legal services at the lawyer's free choice.

Also, the NGOs that have, in the past, and still do need specialized legal support, access it with difficulty, due to lack of funds and because it is not offered in the form of pro bono assistance, as is the case in most European countries.

We therefore consider that, in Romania, the express regulation of pro bono practice is a necessity. It would serve to raise into law the professional policy statement that the UNBR Council already made in 2018.

4.5. *De lege ferenda* regarding pro bono legal practice

Even if the practice of law is a liberal profession and, according to art. 1 of Law no. 51/1995, republished, the lawyer is independent and obeys only the law, the statute of the profession and the code of ethics, the impediments and shortcomings in

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[95] Idem, p. 6.

[96] Raportul a fost realizat de DLA Piper, fiind disponibil la: https://www.pilnet.org/wp-content/uploads/2021/11/A11671_European_Bars_and_Pro_Bono_Booklet_V2.pdf (accesat 24.10.2022).

[97] DLA Piper, *European Bars and Pro Bono,* noiembrie, 2021, p. 5.

[98] Latham & Watkins LLP, *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions,* p. 4.

[99] Studiul, *Avocatura Pro Bono – indicator al funcționării profesiei într-o democrație reală,* a fost realizat de Centrul de Acțiune pentru Egalitate și Drepturile Omului - ACTEDO, Asociația Salvați Copiii – Filiala Iași și Centrul de Resurse Juridice, fiind disponibil la: https://actedo.org/wp-content/uploads/2015/12/AVOCATURA-PRO-BONO_fin.pdf (accesat 29.10.2022).

[100] ACTEDO, Asociația Salvați Copiii – Filiala Iași, CRJ, *Avocatura Pro Bono – indicator al funcționării profesiei într-o democrație reală,* 2015, p. 9.

[101] Idem, p. 10.

practical reality still generate an uncertain situation for the practice of pro bono law, specifically of the principles that should govern it.

Pro bono legal assistance should be consistent with the concept revealed by the name. The expression is adopted from Latin, where the term "*pro bono publico*" revealed an activity "*for the public good*". Therefore, it should not have a general character, but focus on providing this assistance to those who need it most, namely people from vulnerable groups or the organizations that assist or represent them.

As we noted in section 4.1., according to its definition, pro bono legal practice should consist of:

- ☐ a service provided by a lawyer;
- ☐ the quality of this free service should be similar to that of the service that the lawyer provides for a fee;
- ☐ the beneficiaries of the service are people from groups considered vulnerable or organizations that support or assist such groups.

4.5.1. The rationale and content of the proposed legal text

Through the lens of the legislative technical norms established by Law no. 24/2000[102], republished, we consider it necessary for the institution of pro bono legal assistance to have a separate article dedicated to it. It would be inserted following art. 30 of Law no. 51/1995, republished, considering that art. 30 is the one that regulates the lawyer's right to a fee.

Also, each paragraph of the proposed article seeks to regulate only one aspect of the new institution, as follows.

> **Para. (1)** enshrines pro bono practice as a lawyer's right. Obviously, it can be exercised or not, which is why there was no resort to the introduction of redundant explanations, such as that it can be provided voluntarily.

The term "pro bono" was used to make it clear that the article enshrines pro bono legal assistance in principle.

We consider that the mention in the proposed text of the activities provided by art. 3 of the Law that the lawyer provides, for a fee, as an object of his profession, leads to a natural interpretation in the sense that they will be provided free of charge at the same qualitative level as when they are provided on the basis of a fee.

> **Para. (2)** establishes that pro bono legal assistance will be provided for the benefit of certain persons, defined in the enumeration retained by paragraph (3).

This delineation appears important to counterbalance and avoid the abusive exercise of this right, concerns that have been expressed in the past by the legal profession or the governing bodies of the profession.

The reason for the regulation of the institution of pro bono legal assistance must have the sole purpose of assisting and representing people in a special situation, whether it is a vulnerable one or a discriminatory one.

> **Para. (3)** defines what is meant by "persons belonging to vulnerable social groups or discriminated persons", respectively litigants to whom the lawyer has the right to provide pro bono legal assistance.

In order to comply with the rules of legislative technique, references to legal definitions that are already in force were used in the case of most of the listed categories of persons, in order to avoid legislative parallelism.

In the case of categories of persons for which the statement is clear enough and there is no established legal definition, but the common, grammatical meaning of the terms is applied, the creation of definitions has been avoided.

The enumeration of categories includes as much as possible all groups of vulnerable or discriminated persons, but, in order not to disfavor possible persons who cannot be included in these categories, even though they are in a vulnerable or discriminatory situation, the enumeration ends with a category that also includes them, respectively let. n).

The assessment is left to the lawyer as they decide whether or not to grant pro bono legal assistance and therefore they check whether, reasonably, the person falls into this category. They also have at their disposal the definitions of the previously listed groups as delimitations to assist them in this analysis.

> **Para. (4)** emphasizes the role of non-governmental organizations in establishing the connection between the lawyer and the persons in the categories listed in paragraph (3). Considering that at the national level there are organizations whose specificity is that of protection and assistance for people from the mentioned categories, they are often much better able

[102] Publicată în M.Of. nr. 260 din 21.04.2010.

to make a prior determination of the need for these people to access pro bono legal assistance. For this reason, it is necessary to express permission for the lawyer to collaborate with these organizations and, as far as they deem appropriate, to join them.

It is also left to the free choice of the lawyer the decision to grant, within this collaboration, pro bono legal assistance even to non-governmental organizations that deal with people from the categories listed in paragraph. (3).

The insertion of this mention in the legal text is necessary because para. (3) limits pro bono assistance to the categories defined there. However, as we have previously shown in our analysis, it appears possible that, in order to provide support to the people that the association or foundation deals with, these NGOs themselves need the legal assistance in question.

Para. (5) establishes an exception to pro bono legal assistance, establishing the situation of assistance/representation without payment of a fee, provided for persons in the family circle. However, this does not fall within the notion of pro bono practice, as it is understood in this proposal.

The provision is necessary because sometimes the lawyer is in a position to assist or represent their family members. In such a situation, they should conclude a legal assistance contract that also provides for a fee. However, it seems reasonable to assume that in such situations the lawyer will not claim or receive remuneration from the represented family member.

In addition, the compromise solution in which the lawyer mentions in the contract a modest amount that, in reality, they will never collect, does not appear natural.

Para. (6) regulates in principle the option of bar associations to support pro bono legal assistance, by establishing at the institutional level a so-called Pro Bono Assistance Centre. They can thus provide volunteer lawyers with logistical support (e.g. an office in the bar headquarters).

Such ways of support can also be found at the level of French bars, where the so-called "Points d'accès au droit"[103]" have been established, which offer free advice through volunteer lawyers.

Also, the proposed legal text regulates the possibility that the bar itself can call and collaborate with non-governmental organizations in order to organize this Centre, considering that they have the know-how related to the needs of pro bono legal assistance of the categories of people listed in para. (3).

The last paragraph, para. (7) encourages the involvement of all forms of practicing the profession of lawyer in pro bono legal assistance, as well as in promoting it in public, in order to inform the community about the possibility of accessing this type of legal assistance.

4.5.2. The text of the proposed article of law

Following art. 30 of Law no. 51/1995, republished, a new article is introduced, 30 ind. 1, with **the following content:**

(1) The lawyer has the right to also exercise the activities provided by art. 3 pro bono, i.e., without charging a fee.

(2) In exercising this right, the pro bono legal assistance activity will be provided for the benefit of persons belonging to vulnerable social groups or to discriminated persons, as defined in paragraph (3).

(3) By "persons belonging to vulnerable social groups or discriminated against" we mean:

a) persons in a vulnerable group, as this term is defined by art. 6 lit. p) from Law no. 292/2011 of social assistance;

b) people without a home, as they are defined by art. 6 lit. z) from Law no. 292/2011 of social assistance;

c) persons with disabilities, as they are defined by art. 6 lit. aa) from Law no. 292/2011 of social assistance;

d) poor people, as this term is defined by art. 6 lit. hh) from Law no. 292/2011 of social assistance;

e) persons in a difficult situation, as this term is defined by art. 6 lit. jj) from Law no. 292/2011 of social assistance;

f) elderly people, who have reached the age of 65, without relatives or who do not benefit from their support, in risk situations;

[103] See Latham & Watkins LLP, *Pro bono Practices and Oportunities in France*, 2015, p. 202, for details, available at: https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-france.pdf (accessed 29.10.2022).

g) minors at risk of dropping out of school or who have dropped out of school;

h) persons who are victims of human trafficking;

i) people who are victims of gender-based violence;

j) asylum seekers, as they are defined by art. 2 para. (1) lit. b) from Law no. 122/2006 on asylum in Romania, as well as persons whose asylum applications have been approved;

k) refugees, as they are defined by art. 2 para. (1) lit. f)1 of Law no. 122/2006 regarding asylum in Romania, as well as the persons who applied for this status, before it was granted to them;

l) discriminated persons, according to the criteria retained by art. 2 para. (1) from OG no. 137/2000, republished, on the prevention and sanctioning of all forms of discrimination;

m) persons in a disadvantaged category, as this term is defined by art. 4 of OG no. 137/2000, republished, on the prevention and sanctioning of all forms of discrimination;

n) any other persons, who, according to the criteria listed above, can reasonably be considered by the lawyer to be in a vulnerable or discriminatory situation.

(4) In order to provide pro bono legal assistance, the lawyer may collaborate with or join associations or foundations whose purpose is to support the persons listed in paragraph (2). The collaboration may also consist of providing pro bono legal assistance to these associations and foundations.

(5) Distinct from the pro bono legal assistance activity provided for in para. (2), the lawyer can provide legal assistance, without charging a fee, to the spouse, life partner, relatives up to the 4th degree, including persons who have become such relatives through adoption, according to the law.

(6) In support of pro bono legal assistance, each bar can organize a Pro Bono Assistance Centre at its level. For the organization and performance of its activity, the bar may collaborate with the associations or foundations mentioned in paragraph (4).

(7) The forms of exercising the profession of lawyer can promote through its own and through voluntary activities, which can be brought to the public's attention, the pro bono legal assistance mentioned in paragraph. (2).

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Chapter 5

Conclusions and recommendations

5.1. Public legal aid

Even if the legislative proposal under debate, to change the thresholds applicable to public legal aid, will become applicable, it does not solve the problem of access to justice for vulnerable groups.

As we have shown in this report, vulnerability does not only refer to a poor material condition, but also to other circumstances that create it. In some situations, the person who requires access to justice may be temporarily, or momentarily, in a precarious material condition, an aspect that cannot necessarily be proven with the documents required by the legal provisions.

Although Romania is still a rather socialist, left-wing state, an aspect also proven by the parties in power in the last 30 years, the public policies throughout this period were not reflected in a protection of vulnerable groups regarding access to justice.

Therefore, our conclusions in terms of recommendations regarding public legal aid will take into account the following aspects:

1. Re-analyzing the institution of public legal aid through the lens of some defining principles [104], such as*:*

a) the cost-benefit analysis of the provision of this public aid, which should balance other aspects, not just the direct budgetary effort; thus, the social and economic benefits of providing this service must be estimated from the perspective of the costs of not providing them;
b) fair payment of the services offered through this aid relative to their reasonable quality;
c) public legal aid to cover, after the admission of such a request, all the costs of the litigation in which it was admitted;
d) the eligibility criteria for granting aid, in addition to the material situation, should concern: i) the vulnerability of the litigant, including that revealed by the lack of education, ii) the interests of justice, which relate to the relevance of the case, both for the individual and for society, and iii) the complexity of the legal issue; in this context, the exclusion of the criterion of the financial situation for accessing public legal aid can be considered, in the case of vulnerable groups that will be listed exhaustively;
e) guaranteeing the litigant's general access to initial legal advice, when there are no other reasonable sources for him to access such advice.

A fair access to justice for vulnerable groups can only create a beneficial, boomerang effect, through the prism of cost-benefit analysis.

2. *The involvement of the UNBR and the bar associations in informing litigants of their rights regarding public legal aid.*

UNBR and the bar associations should inform, according to a unitary methodology, through their websites, in a way as accessible as possible for litigants, about the conditions for accessing public judicial aid, the necessary documents, as well as by making available some models of forms necessary for requesting aid.

As we showed in section 2.1.2, currently this objective is far from being fulfilled.

3. *The realization by the national appeal courts of an annual statistic at the level of their constituencies, publicly accessible statistics on the website of the Ministry of Justice, regarding the accessibility of public legal aid.*

This statistic should include at least:

a) the total number of cases in which public legal aid was requested in relation to the total number of cases before the courts;
b) of these, the total number of applications admitted and rejected;
c) and, among those admitted, the facility that was granted (exemption/scaling of the judicial stamp duty, payment of the attorney's fee, etc., as provided by art. 6 of GEO no. 51/2008).

[104] For the detailed listing, see section 2.6 of this Report.

Also, in addition to publishing the statistics made available by the appeal courts, it would be necessary for the Ministry of Justice to produce a national statistic according to the same criteria, by aggregating the information transmitted from the territory.

5.3. Access to justice for victims of domestic violence

Although Law no. 217/2003 underwent successive changes as a result of the non-compliant transposition of the Istanbul Convention, we believe that improvements are still needed, both from the perspective of the transposition of certain components of domestic violence into criminal law and from the perspective of the legal advice/legal assistance services intended to be provided to the victims.

Thus, regarding the definition of domestic violence, it has undergone an improvement from the perspective of including psychological violence, harassment and cyber violence in its definition. However, from a sanctioning perspective, the Romanian legislator chose a milder option, as they are not criminalized from a criminal point of view. For example, the harassment provided for by art. 208 of the Criminal Code is an independent crime, it does not fall within the scope of family violence crimes provided for by art. 199 of the Criminal Code.

In addition, the perspective of the Romanian legislator is important regarding the constitutive content of the crimes that fall within the scope of art. 199- *Domestic violence*, the latter being crimes exclusively against bodily integrity or health. Therefore, any other forms of domestic violence are considered less serious since they are not penalized. This aspect is also reflected in the conditions imposed by Law no. 217/2003 regarding the issuance of the provisional protection order, namely an imminent risk that *the life, physical integrity or freedom* of a person will be endangered by an act of domestic violence while, in the case of the protection order, the law refers to *endangering life, physical or mental integrity or freedom,* expanding, in this case, the scope of protection also in the area of psychological violence.

With regard to the latter aspect, the Annex of Law no. 217/2003 *entitled Request for issuance of the protection order* contains in Chapter VIII marginally named *Medical assistance of the victim* a question regarding *potential physical injuries or psychological maltreatment*. Therefore, even in the version in which the possibility of issuing a protection order is recognized in the case of psychological violence, it becomes extremely medicalized, the term maltreatment being difficult to demonstrate in practice.

Regarding the obligations assumed by Romania through the transposition laws of the Istanbul Convention, the free legal advice and assistance of victims of domestic violence, provided as their right, is relevant to the object of this study. Although the central and local authorities have the obligation to inform the victims about these rights, including about the conditions and procedure for granting financial compensation by the state, there are no details about the institution/institutions to which the victims can turn.

With regard strictly to legal advice, as we have shown previously, this task falls to the authorities of the local public administration.

Recommendations:

 The inclusion in criminal legislation of all forms of domestic violence; this fact would show that Romania understands in a real, contemporary way, all the actions or inactions that can lead to forms of domestic violence, beyond the classic ones of physical violence

 Informing victims of domestic violence about their rights must be effective; for this, each authority/institution that comes into contact with them must provide, concretely, in a standardized way, information on who, where and under what circumstances they offer legal advice, free legal assistance or other types of services provided for by law

 The text must be detailed regarding the persons/institutions that provide legal advice: either the legal framework regarding the profession of legal advisor is changed or the advice is provided through lawyers

 Art. 7 of Law no. 217/2003 must be clarified in the sense of specifying the difference between the right to legal assistance, namely the institutions provided for in paragraph 2 letter. c) and the free legal assistance provided for in paragraph 2 letter d) from the same article

5.4. Access to justice for crime victims

Romania has partially transposed Directive 2004/80/EC on the compensation of crime victims and, subsequently, Directive 2012/29/EU DIRECTIVE 2012/29/EU of October 25, 2012 establishing minimum standards regarding the rights, support and protection of crime victims through amendments to Law no. 211/2004.

Since both directives have a cross-border dimension, Romania could not create for its own citizens a situation inferior to those who have an element of foreignness in question. Therefore, the successive transpositions obliged Romania to create access to justice for the victims of crimes, specialized services for them as well as the granting of financial compensation to them, at least on a theoretical level.

With regard to informing the victims of crimes, the judicial bodies have the obligation to inform the victims about the specialized support services, the criminal investigation body to which they can make a complaint, *the right to legal assistance and the institution* to which they can turn, the conditions and procedure for *granting free legal assistance*, the conditions and procedure for *granting financial compensation* by the state, etc.

It is interesting to note that, although Law no. 211/2004 involves concrete awareness-raising actions for victims of crimes regarding their rights, Annex no. 1 of the law contains a single form entitled *Form for submitting the request for financial compensation in cross-border situations (art. 6 paragraph 2 of Council Directive 2004/80/EC)* as there is no stand-alone form for victims of crimes, without extraneous elements.

On the other hand, the text of art.4, paragraph 1 letter c) does not define, concretely, the legal content of the right to legal assistance and, even less, the institution to which the victims can turn.

Instead, the free legal assistance specified in art. 4, paragraph 1 letter d) can be interpreted as a type of public legal aid provided by art. 8^1 of OG no. 51/2008, to the extent that the person is the victim of crimes explicitly provided for by art. 14 of Law no. 211/2004 or is the victim of other crimes but has a monthly income per family member at most equal to the minimum gross national salary established for the year in which the victim applied for free legal assistance (art. 15).

Recommendations:

 Clarifying, in concrete terms, the meaning of the phrase legal assistance as well as specifying the institution(s) that provide this type of assistance

 Standardized information, on the basis of predetermined forms at the national level, of the victims of crimes regarding all the rights provided for in art. 4 of Law no. 211/2004 as well as the specific steps that must be taken to access these rights

 Accessing the panel of judges within the tribunal for the granting of financial compensation is a desired goal that is difficult to achieve in the absence of an elected lawyer, so it is necessary to extend free legal assistance to this stage as well

5.4. Pro bono legal practice

Pro bono legal culture is developing in European countries, although there are certain gaps between countries. However, the majority have understood that pro bono practice is necessary as long as the public legal aid system does not sufficiently support those in need. As the declared role of the lawyer is that of **defender**, his pro bono involvement in the problems of vulnerable groups can only be natural.

Our proposal to regulate pro bono legal practice at the level of law comes as a necessary step following the professional policy statement adopted in 2018 by the UNBR Council.

This law proposal, as can be seen from the previous chapter, does not wish to compel anything, but only to create the legal framework for the exercise of a natural right of the lawyer. Its adoption would distinguish between the lawyer's right to provide pro bono legal assistance and their obligation to provide free legal assistance, when, pursuant to art. 70 para. 2 of the Law, is designated by the Dean.

Our proposal on the regulation of pro bono practice is also a starting point for debates on the need to adopt such provisions, without claiming that the proposed form is perfect and could not undergo changes.

In conclusion, our recommendations from the perspective of this topic would be the following:

> *1. The adoption of clear rules, preferably at the level of primary legislation, which enshrine the lawyer's right to provide pro bono legal assistance to people in vulnerable groups, either individually or when the connection between them is facilitated by the non-governmental associations that assist such groups.*

In view of the situation of all the European countries analyzed in chapter 4, the regulation and encouragement of pro bono practice as a lawyer's right is a natural and necessary step.

2. The involvement of the UNBR and the bar associations in encouraging pro bono practice, by creating, on a permanent basis, Pro Bono Assistance Centres, which will operate on a voluntary basis, both for lawyers and law students from university centres.

3. Involvement of the UNBR and bar associations in establishing partnerships with NGOs that aim to assist vulnerable groups, so that the needs of these groups are known by the bar associations, and the organizations know that the bar associations have established assistance centres.

Also, these collaborations can lead, with time, to offering the clearinghouse title to the NGOs with which the bar associations collaborate.

4. The involvement of UNBR and the bar associations in the organization of events with the theme of pro bono legal assistance, such as: the European pro bono week, the day of free legal advice, the annual pro bono awards, etc.

All these would constitute good practices in the matter for popularizing the involvement of lawyers in the needs of the community.

5. The individual involvement of the forms of practicing the profession, especially law firms with a medium and large number of lawyers, in the realization of their own programs in which they provide pro bono legal assistance.

In the case of multi-lawyer forms of practice, the ability to engage in pro bono actions is greater than in the case of individual practices.

These are just some of the lines that can guide, in the future, the development of pro bono advocacy in Romania.

ABOUT THE REPORT

SGlobally, it is estimated that almost four billion people live outside the protection of the law, mostly because of poverty or because they are marginalized by society. In Romania, in 2020, 35.8% of the population lived at the poverty line and at risk of social exclusion, the highest proportion in the European Union, where the average is 21.9%.

This study aims to address legal issues in the access to justice of vulnerable groups in Romania, having as research objectives the identification of legislative gaps in the field and the proposal of concrete measures, including legislative changes, to improve access to justice. The study is aimed at lawyers, magistrates and other legal professionals, as well as legislators and decision makers.

We hope that this study will be a useful tool for law specialists and practitioners who are involved in disputes concerning people from vulnerable groups, but also for non-governmental organizations and other entities that provide legal aid. In particular, we wish legislators to find useful the final chapter, which contains recommendations for legislative changes and related measures, to improve access to justice for vulnerable groups in Romania.

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