

YEREVAN STATE UNIVERSITY

FACULTY OF LAW

**MATERIALS OF THE
CONFERENCE DEVOTED TO
THE 85TH ANNIVERSARY OF
THE FACULTY OF LAW OF
THE YEREVAN STATE
UNIVERSITY**

**Yerevan
YSU Press
2018**

UDC 378:340:06

Editorial board

Gagik Ghazinyan Editor in Chief, Dean of the Faculty of Law, Yerevan State University, Member of the RA National Academy of Sciences, Doctor of Legal Sciences, Professor

Armen Haykants Doctor of Legal Sciences, Professor at the Chair of Civil Law of the Yerevan State University

Yeghishe Kirakosyan Candidate of Legal Sciences (Ph.D.), Associate Professor at the Chair of European and International Law of the Yerevan State University, Advisor to the Prime-Minister of the RA

The present publication includes reports presented during the Conference devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University. Articles relate to different fields of jurisprudence and represent the main line of legal thought in Armenia. Authors of the articles are the members of the Faculty of Law of the Yerevan State University. The present volume can be useful for legal scholars, legal professionals, Ph.D. students, as well as others who are interested in different legal issues relating to the legal system of Armenia.

This publication can be accessed online by the following address:
http://ysu.am/files/Law_faculty_English_book_85.pdf

ISBN 978-5-8084-2326-8

© YSU Press, 2018

Contents

Artur Vagharshyan	
DEFENSIBILITY AS THE PRINCIPLE OF STATE CONSTRUCTION: CONCEPT AND NORMTIVE CONTENT	9
Taron Simonyan	
CONTROLLED REALITY AND THE FICTION OF FREEDOM: SYNERGY ALGORITHMS	25
Viktorya Ohanyan	
INTERSECTORAL AND INTEGRAL APPROACHES AS A RESPONSE OF THE THEORY OF LAW TO THE CONTEMPORARY ISSUES OF THE IMPLEMENTATION OF LAW	36
Karen Amiryan	
NATURE OF RELATIONS BETWEEN THE CONSTITUTIONAL COURT AND LEGISLATIVE AUTHORITY IN THE REPUBLIC OF ARMENIA	47
Vardan Ayvazyan	
SYSTEMATIZATION OF CONSTITUTIONALITY	57
Gevorg Danielyan	
EVOLUTION OF TERMINOLOGY IN THE CONTEXT OF ARMENIAN JURISPRUDENCE.....	72
Anahit Manasyan	
CONSTITUTIONAL DEVELOPMENTS REGARDING THE INSTITUTE OF CONSTITUTIONAL JUSTICE IN THE REPUBLIC OF ARMENIA.....	88
Rustam Makhmudyan	
KEY QUESTIONS (ISSUES) OF REALIZATION OF CONSTITUTIONAL-LEGAL STATUS OF LEGISLATION OF SUPREME JUDICIAL COUNCIL.....	95

Vahram Avetisyan	
	CORPORATE GOVERNANCE AND RESOLUTION OF CORPORATE DISPUTES IN THE REPUBLIC OF ARMENIA .. 110
Davit Serobyán	
	THE PROBLEM OF INTERPLAY OF THE CONCEPTS OF ECONOMIC ACTIVITY AND ENTREPRENEURIAL ACTIVITY IN THE LIGHT OF CONSTITUTIONAL AMENDMENTS..... 127
Arpine Hovhannisyan, Narine Avagyan	
	TRADEMARKS AND BRANDS: WHAT ARE THE DIFFERENCES? 138
Grikor Bekmezyan	
	ON SOME ISSUES PERTAINING TO COMPENSATION OF NON PECUNIARY DAMAGE IN CIVIL LAW OF THE REPUBLIC OF ARMENIA 153
Arsen Tavadyan	
	REGULATION OF INVALID CONTRACTS UNDER ARMENIAN LEGISLATION..... 166
Tatevik Davtyan	
	PROMOTING A PRO BONO CULTURE IN ARMENIA’S LEGAL PROFESSION 173
Harutyun Khachikyan	
	THE RESOCIALIZATION OF THE CONVICT AND THE NEW CRIMINAL AND PENITENTIARY LEGISLATIONS OF ARMENIA..... 190
Ara Gabuzyan	
	SOME ISSUES PERTAINING TO LEGISLATIVE DEFINITION OF “CRIMINAL OFFENSE” 203
Gagik Ghazinyan	
	THE CONSTITUTIONAL FOUNDATIONS OF THE INDEPENDENCE OF THE JUDICIAL POWER IN THE REPUBLIC OF ARMENIA 210

Vahe Yengibaryan	
THE KEY ISSUES OF THE CRIMINAL PROCEDURE GROUNDS FOR THE FORENSIC EXPERTISE.....	232
Tatevik Sujyan	
PECULIARITIES OF JUDICIAL ACTS APPEAL AND CASSATION REVISION IN CRIMINAL PROCEDURES	242
Armen Hovhannisyan	
JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS AS A BASIS FOR EXCEPTIONAL REVIEW IN CRIMINAL PROCEDURE IN A FORM OF NEW CIRCUMSTANCE	258
Nelli Aghababyan	
PECULIARITIES OF JUVENILE PROCEEDINGS IN THE CRIMINAL PROCEDURES OF THE REPUBLIC OF ARMENIA.....	270
Vahe Hovhannisyan	
THE CHALLENGES OF RIGHT TO EXAMINE THE CASE AT CIVIL COURT WITHIN A REASONABLE TIMEFRAME	278
Sergey Meghryan, Hayk Hovhannisyan	
APPORTION OF BURDEN OF PROOF IN WORKS AND/OR SERVICES CONTRACTS: ARMENIAN PERSPECTIVE: THEORY AND PRACTICE.....	291
Aida Iskoyan, Heghine Grigoryan	
THE ANTHOLOGY AND THE SYSTEM OF ENVIRONMENTAL LAW OF THE REPUBLIC OF ARMENIA	309
Tirayr Vardazaryan	
GENERIC DESCRIPTION OF EMPLOYMENT PROTECTION IN TRANSFERS OF UNDERTAKINGS (TUPE) UNDER THE ENGLISH LAW: DEFINITION AND CLASSIFICATION	332
Tigran Markosyan, Lilit Petrosyan	
GENERAL LEGAL CHARACTERISTICS AND FEATURES OF OBLIGATORY ACTION.....	350

Tigran Grigoryan, Mher Mkrtchyan
SOME CRITICAL REMARKS ON THE JUDGMENT OF THE
EUROPEAN COURT OF HUMAN RIGHTS CONCERNING THE
CASE AYVAZYAN v. ARMENIA 358

Ani Simonyan
RIGHT TO DEVELOPMENT:
KEY CONCEPTS AND OUTLOOK..... 373

PROMOTING A PRO BONO CULTURE IN ARMENIA'S LEGAL PROFESSION

Tatevik Davtyan¹

Definition of “Pro Bono Publico” and Its Context

Pro bono comes from the Latin term, "pro bono publico", meaning "for the public good and for the welfare of the whole"². Over time the phrase has become associated with the law, and particularly, the unpaid work that lawyers do; however, there are many different definitions of what constitutes pro bono work and so the scope of the term is unclear³.

Historically, lawyers have provided free legal help on occasion, in some circumstances. "Pro bono service can be traced to practices in the early Roman tribunals, medieval ecclesiastical courts, and to Scottish and English legal proceedings"⁴. Bishops in the 12th century were required by scripture to assist indigent people with legal problems,⁵ and subsequently required lawyers to provide services for spiritual, rather than monetary compensation⁶. English law required

¹ Candidate of Legal Sciences, Associate Professor of the Chair of Civil Law of the Yerevan State University. Director of the State Agency of Judicial Projects Implementation Unit Ministry of Justice of the Republic of Armenia. E-mail: davtyan.tatevik@gmail.com.

² Black's Law Dictionary, 4th ed., s.v. "pro bono publico".

³ "Tension at the Border": Pro Bono and Legal Aid. A Consultation Document prepared by the Canadian Bar Association's Standing Committee on Access to Justice, at 2.

⁴ Raj Anand with Steven Nicoletta, "Fostering Pro Bono Service in the Legal Profession: Challenges Facing the Pro Bono Ethic", paper prepared for the Chief Justice of Ontario's Advisory Committee on Professionalism, Ninth Colloquium on the Legal Profession, Toronto 2007. See, "Tension at the Border": Pro Bono and Legal Aid, *Id.* at 3.

⁵ Zino I Macaluso, "That's O.K., This One's on Me: A Discussion of the Responsibilities and Duties Owed by the Profession to do Pro Bono Publico Work" (1992) 26 U.B.C. L. Rev. at 6.

⁶ Lorne Sossin, "The Public Interest, Professionalism, and the Pro Bono Publico" (2008) 46 *Osgoode Hall L.J.* 131 at 135.

lawyers to represent the poor in the 15th century¹. Throughout the 20th century, lawyers have often provided free services, particularly for individuals who are members of their family, religious institution or community. A survey conducted in 1970s in the U.S. found that two thirds of pro bono work lawyers were doing was for friends and relatives². In addition, committed lawyers concerned about social justice have taken on test cases with the intention of achieving systemic change or asserting the rights or protections under the law of a certain group of people. For instance, the Women's Legal Education and Action Fund (LEAF) has intervened in over 150 cases, using pro bono lawyers, to assert women's equality rights³.

There is no universally accepted definition of "pro bono publico" legal services. At its broadest, according to Lorne Sossin, "pro bono publico" may be defined as legal work done without compensation for the public good. Many would define the term more narrowly, as non-compensated legal representation on behalf of the poor⁴.

Most definitions focus on legal assistance provided to clients who cannot afford ordinary market rates, or to clients whose case raises a wider issue of public interest. The term includes legal services provided to organizations working for disadvantaged groups or for the public good. Pro bono can also involve lawyers and others engaging in free community legal education, law reform and other activities. All definitions of pro bono include services that are provided on a without-fee (or without expectation of a fee) basis. Some definitions go further and incorporate work done on a reduced-

¹ Deborah L. Rhode, *Pro Bono in Principle and in Practice* (California: Stanford University Press, 2005) at 21.

² Barbara A. Curran and Francis O. Spalding, *The Legal Needs of the Public: preliminary report of a national survey by the Special Committee to Survey Legal Needs* (Chicago: ABA, 1974). See, "Tension at the Border": Pro Bono and Legal Aid, *Id.* at 3.

³ <http://leaf.ca/legal-issues-cases-and-law-reform>

⁴ Lorne Sossin, *ll* at 132.

fee, or substantially reduced-fee basis.

The Frankfurt Pro Bono Roundtable in Germany describes “pro bono publico” as: “The provision of free legal advice for a good cause. Pro bono activities involve advising and representing charitable and non-profit organizations, NGOs, foundations, and persons of limited means, as well as a commitment to promoting due process and human rights. The intention behind pro bono work is for law firms to make their expertise and resources available for a good cause and, as such, to develop their civic commitment through their professional activities. Pro bono legal advice is subject to the same professional standards as paid-for legal advice”¹.

The Pro Bono Institute in the United States defines pro bono as activities that a firm undertakes normally without expectation of fee and not in the course of ordinary commercial practice and consisting of: a) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; b) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; and c) the provision of legal assistance to charitable, religious, civic, community, governmental or educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate².

The American Bar Association (ABA) provides a non-binding model ethical code that individual bars at the state level are encouraged to adopt. ABA Model Rule 6.1 defines pro bono as follows: Every lawyer has a professional responsibility to provide

¹ Pro Bono Clearinghouse Manual. Resources for developing pro bono legal services. A joint publication of PILnet: The Global Network for Public Interest Law and Advocates for International Development, at 18.

² *Supra*, note 13 at 18-19.

legal services to those unable to pay. A lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to: 1) persons of limited means or 2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

b) provide any additional services through: 1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; 2) delivery of legal services at a substantially reduced fee to persons of limited means; or 3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means¹.

To sum up, the term “pro bono public” is used within the legal profession to refer to lawyers’ provision of free legal services to those in need but otherwise without access to such services. While the kind of work that is considered to be “pro bono” may vary depending on local legal traditions, cultures or social backgrounds, it can be

¹https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

defined as having certain characteristics¹. Pro bono can be described as legal work done by lawyers for the public good, rather than for commercial interests. The legal work is done on voluntary bases, i.e., uncompensated for the lawyer and free for the client. Pro bono assistance is delivered with the same professional standard as paid legal work.

“Pro Bono Publico” as a Professional Responsibility

In countries with established pro bono traditions, it has often been suggested that lawyers, individually and as a profession, have a special duty to attempt to ameliorate the problem of access to justice and to help close the gap between those who can afford access to the justice system and those who cannot. Various explanations are offered as to why lawyers should do pro bono work. Below we briefly describe main arguments in favor of lawyer’s professional duty to ensure access to justice that have been widely discussed in the scientific literature.

The Historical Argument: This argument supports the idea that the duty and tradition of the profession, as a “helping profession” to assist those who require legal services but cannot afford them, is intrinsic to and is as old as the profession itself². The concept of service “pro bono public” is “at the very core of the [legal] profession” and, indeed, “the premise upon which the profession is founded”³.

Historian James A. Brundage notes in his article that while legal

¹ Pro Bono Clearinghouse Manual. Resources for Developing Pro Bono Legal Services. A joint publication of PILnet: The Global Network for Public Interest Law and Advocates for International Development at 17.

² William McDowell and Usman M. Sheikh “A Lawyer’s Duty to Ensure Access to Justice”. Prepared for The Advocates’ Society Symposium on Professionalism (January 2009), at 6.

³ Mr. Justice J.C. Major, Supreme Court of Canada, “Lawyers’ Obligation to Provide Legal Services,” (1994-1995) 33 Alta. L. Rev. 719 at p. 721, see, William McDowell and Usman M. Sheikh “A Lawyer’s Duty to Ensure Access to Justice”. Prepared for The Advocates’ Society Symposium on Professionalism (January 2009), at 7.

aid for the poor and disadvantaged was until 1250 A.D. primarily viewed as a concern for the church, it was civil advocates in the middle of the 13th Century (who were then beginning to emerge as an identifiable profession), who began to assume responsibility for providing legal assistance to indigent litigants at the same time as canonical legislators began to restrict the kinds of legal claims that were justiciable in ecclesiastical courts on behalf of the poor and disadvantaged¹. “Like physicians, who likewise began in this period to identify themselves as professionals, rather than simply as practitioners, medieval lawyers regarded it as one mark of their superiority to other craftsmen that they furnished their specialized skills to economically and socially disadvantaged persons without compensation. Providing the benefits of expert skill and knowledge for those to whom a profit economy would deny them was from the beginning an integral characteristic of professional status”².

The Monopoly or Quid Pro Quo Argument: Proponents of this argument support the idea that lawyers have a virtual monopoly on access to the legal system. According to them, the obligation on the part of lawyers and the legal profession arises as a “quid pro quo” or in return for the state-licensed monopoly that lawyers have over legal work³. Because of this, the profession has long been understood to bear a corresponding obligation to help the disadvantaged in need of legal services. The fact that lawyers recognize the need to volunteer their efforts — and have consistently acknowledged this obligation as

¹ James A. Brundage, “Legal Aid for the Poor and the Professionalization of Law in the Middle Ages,” (1988) 9 J. Leg. Hist. 169 at 175.

² Robert P. Lawry, *The Central Moral Tradition of Lawyering*, (1990) 19 Hofstra L. Rev. 311 at 362 (moral tradition justifying pro bono obligation); Michael Millemann, *Mandatory Pro Bono in Civil Cases: A Partial Answer to the Right Question*, (1990) 49 Md. L. Rev. 18 at 32-48 (noting that, as the private bar developed, duty to represent the poor became partly the responsibility of the bar) and Steven B. Rosenfeld, *Mandatory Pro Bono: Historical and Constitutional Perspectives* (1981) 2 Cardozo L. Rev. 255.

³ *Supra*, note 37 at 6.

arising from the license to practice law — is an important part of what distinguishes the practice of law as a profession¹.

The Rule of Law Argument: This argument emphasizes a lawyer's duty to ensure access to justice based upon the unique position in which lawyers stand in relation to democracy, the rule of law and the legal system, in general. If the rule of law and partisan advocacy is considered to be based on laws that are knowable and consistently enforced, then it is threatened if individuals do not have the tools to access the system that administer those laws². Moreover, if egalitarian values of a democracy require equal treatment and access to justice by all, then it is similarly threatened if the poor cannot understand or meet the case against them and cannot give voice to their legal rights³.

The Professional Pride Argument: Proponents of this argument switch the locus of concern from indigent and other disadvantaged persons to lawyers themselves and note the benefits to lawyers, legal employers and the profession generally when efforts are made by legal practitioners to improve access to justice. They argue that pro bono service may: provide training, contacts, trial experience, and leadership opportunities for young lawyers; help lawyers develop new areas of expertise, enhance their reputations and allow them to demonstrate marketable skills; provide lawyers with a sense of personal satisfaction by working for the public good; enhance the reputation of the profession by demonstrating that lawyers are driven by more than simply the bottom line; attract young lawyers and law students to law firms that perform pro bono work; and provide benefits to legal employers by enhancing job retention, workplace

¹ Patrick R. Burns. *The Rules and Pro Bono*. Reprinted from *Bench & Bar of Minnesota* (September 2006), at 1.

² *Supra*, note 37 at 7-8.

³ *Ibid.*

morale and, by extension, job performance¹.

The abovementioned arguments are compelling and do support a special duty on the part of lawyers to ensure access to justice². As William McDowell and Usman M. Sheikh correctly suggest the pro bono services to be “Special responsibilities” owed by lawyers and the legal profession due to “the important role [a lawyer] plays in a free and democratic society and in the administration of justice” as well as “by virtue of the privileges afforded the legal profession”³.

Boosting pro bono culture in Armenia

Issues of legal aid and pro bono practices and opportunities in the Republic of Armenia (hereafter, “Armenia”) have been occasionally reviewed and analyzed in several regional and global studies⁴. Obviously, Armenia does not have a historic pro bono culture, where lawyers acknowledge the importance of the provision

¹ Deborah L. Rhode, *Pro Bono in Principle and in Practice: Public Service and the Professions* (Stanford: Stanford University Press, 2005) at pp. 29-31;

² Some opposite opinions have been also expressed in the scientific literature. See, e.g., Zino I. Macaluso, *That’s O.K., This One’s on Me: A Discussion of the Responsibilities and Duties Owed by the Profession to Do Pro Bono Publico Work*, (1992) 26 *Univ. Brt. Colum. L. Rev.* 65 at 67 (noting that historical accounts on lawyers’ pro bono duties are divided); David L. Shapiro, *The Enigma of the Lawyer’s Duty to Serve*, (1980) 55 *N.Y.U. L. Rev.* 735 and p. 789 (asserting that tradition and history show no pro bono requirement); B. George Ballman, *Amended Rule 6.1: Another Move Towards Mandatory Pro Bono? Is That What We Want?* (1994), 7 *Geo. J. Legal Ethics* 1139 at 1150 and 1156 (pointing out that the legal profession is singled out for societal responsibility); Steven Lubet and Cathryn Stewart, “A ‘Public Assets’ Theory of Lawyers’ Pro Bono Obligations,” (1997) 145 *U. Penn. L.R.* 1245 at 1254 (arguing that lawyers should not have an obligation to solve the access to justice problem simply because they can and arguments from necessity must fail) etc.

³ William McDowell and Usman M. Sheikh “A Lawyer’s Duty to Ensure Access to Justice”. Prepared for The Advocates’ Society Symposium on Professionalism (January 2009), at 9.

⁴ A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions. Prepared by Latham & Watkins LLP for the Pro Bono Institute. March 2016; Global Study on Legal Aid. Country Profiles. United Nations (UNDP, UNODC), December 2016; Global Study on Legal Aid. Global Report. United Nations (UNDP, UNODC), October 2016 etc.

of free legal assistance. While this could be an important socio-cultural barrier, the availability of pro bono legal services is now increasing¹ even though it is not regulated and provided solely on a voluntary and ad hoc basis. In contrast, the provision of state-funded free legal aid is precisely regulated and systemized and has been expanded by the government in recent years².

It is not our purpose in this article to explore issues of state-funded legal aid scheme which worth becoming a subject of another article. However, we strongly support the core principle that pro bono services should complement rather than substitute for a properly funded legal aid system in Armenia. Hence, questions worth addressing in this article include:

- *Is the state policy that address pro bono assistance sufficiently enough to contribute to the expansion of pro bono legal services in the Republic of Armenia?*

- *How can pro bono legal services be better supported and promoted so that they most effectively improve access to justice in Armenia?*

There is no legal obligation on attorneys to undertake pro bono work or to report on pro bono work undertaken by them. Likewise, no specific law regulating the provision of pro bono legal services, and no statutorily mandated minimum legal fee schedule is in effect in Armenia. However, the Law on Advocacy of the Republic of Armenia (thereafter also “the Law”)³ implicitly provides for legal bases for advocates to render pro bono legal assistance.

Pursuant to paragraph 1 of Article 5 of the Law on Advocacy, “Advocate’s activity shall be deemed as a type of advocacy that aims at enforcing and protecting, through means and ways not prohibited

¹ *Ibid.* at 39.

² *Ibid.* at 35.

³ The Law on Advocacy of the Republic of Armenia was adopted by the Parliament on 14.12.2004 and entered into force on 22.01.2005.

by law, rights, freedoms, and legitimate interests of a person receiving legal assistance”. Furthermore, paragraph 1 of Article 6 of the Law stipulates that “Advocates are entitled to compensation for their services”. The Law goes even further stating in paragraph 3 of Article 6 that “Advocates may offer free of charge services”¹.

Pro bono-friendly provisions are also set forth in the Advocate’s Code of Conduct². Rule 2.12.1 of the Code considers the provision of legal assistance to the client as the main purpose of advocate’s activity. Moreover, Rule 2.12.2 compels the Advocates’ Chamber (the Armenian Bar Association) to encourage advocates to provide free legal assistance to individuals. In practice, the Chamber contributes to the strengthening of a pro bono culture in Armenia primarily by arranging weekly free legal consultations provided by advocates and certain students at the School of Advocates; and granting certificates and acknowledgements to advocates that deliver free legal assistance³.

Reports further suggest that a very limited number of NGOs operate and/or finance independent pro bono legal clinics from time to time and may provide pro bono legal assistance on an ad hoc basis. According to Chamber of Advocates’ estimates, currently pro bono legal services in Armenia predominantly consist of legal consultations, with legal drafting, legal research and legal representation and advocacy in courts, arbitral tribunal and administrative bodies comprising the remainder of pro bono services provided⁴.

Certain Higher Education Institutes run legal clinics staffed by

¹ Article 6 of the Law on Advocacy was amended with the mentioned new provision on 08.12.11 by HO-339-N.

² The Advocates’ Code of Conduct was adopted by the General Assembly of the Chamber of Advocates of the Republic of Armenia on February 11, 2012 and approved by the Chairman of the Chamber of Advocates.

³ *Supra*, note 49 at 39.

⁴ *Ibid.*

law students, lecturers and/or professors which provide pro bono legal assistance upon request and in accordance with and subject to the internal regulations of the relevant institution(s). Such clinics are financed by the institutions themselves, universities and/or corporate grants and/or donations.

The Armenian Financial System Mediator (the “Mediator”) is a structure with an independent governing system, founded by the Central Bank of Armenia. The Mediator is funded by the Armenian state. The objective of the Mediator is to resolve the conflicts between natural person consumers and financial organizations concerning goods and stocks. The services provided by the Mediator are free. The principles are stipulated in law “On the Financial System Mediator”.

To sum up, it can be argued that while some legal grounds are established in the relevant legislation for advocates to render legal services at no fee to poor and indigent persons, stricter policies are needed in concert with practical measures to ensure the sustainable growth and expansion of pro bono assistance in the Republic of Armenia.

It is worth mentioning that the Draft “Strategy on Judicial and Legal Reforms in the Republic of Armenia for 2018-2023”¹ developed by the Ministry of Justice of Armenia specifically address issues of developing different types of pro bono assistance and suggests undertaking a study on international best practices on pro bono legal services aiming to introduce some relevant structures into our system.

Hence, the Government of the Republic of Armenia attaches high importance to issues of access to justice in Armenia, therefore, this is the right time to propose and realize reforms in this area both by strengthening the legislation on pro bono assistance, developing

¹ Currently, the Strategy is pending an approval by the Republic of Armenia’s Government.

different types of pro bono structures in Armenia as well as raising awareness and achieve changes in the attitude towards lawyers and the legal profession's role in the facilitation to access to justice. The following recommendations (short-term and long-term) should become subjects of a wide discussion among main stakeholders in the field to include them in the relevant policy documents and implement within the next couple of years¹.

1. Establish Professional Responsibility for Advocates to Provide Pro Bono Service (short-term)

We believe that every advocate has a professional responsibility and should provide pro bono legal services to those who are unable to pay. *We propose to amend the Advocates' Code of Conduct of the Republic of Armenia with a Rule on "Voluntary Pro Bono Services". The Rule should precisely state that an advocate has a professional responsibility to provide legal services to those unable to pay and who would otherwise be deprived of adequate legal advice or representation. An advocate should strive to contribute at least 50 hours or 3% of billings per year on a pro bono basis².*

It should also be acknowledged that there is a crucial need to support such persons who cannot afford to pay for legal assistance but who fail to satisfy the eligibility criteria for state-funded legal aid. *Therefore, above-suggested Rule should include a language*

¹ Recommendations suggested in this article are based on best practices and policies used in well-established pro bono systems. See, e.g., the American Bar Association's pro bono policies.

Available at:
https://www.americanbar.org/groups/probono_public_service/policy.html

² Similar requirements have been endorsed and adopted by the American Bar Association (the "ABA") in the ABA's Model Rule 6.1 (50 hours per year) ABA Model Rule 6.1 ("Voluntary Pro Bono Publico Service"), American Bar Association, available at: <http://www.abanet.org/legalservices/probono/rule61.html>. and the Canadian Bar Association (the "CBA") in the CBA Pro Bono Committee's Founding Resolution (50 hours or 3% of billings per year). Pro Bono Working Group Report, Resolution 03-04-M (February 2003), Canadian Bar Association.

Available at: <http://www.cba.org/cba/resolutions/2003res/03-04-M.aspx>

specifying that an advocate should provide pro bono services also to those whose incomes and financial resources place them above limited means yet whose resources would be depleted if they were required to bear the standard costs of civil litigation alone¹.

2. Establish a Voluntary Pro Bono Reporting Requirement (short-term)

Another policy recommendation that we suggest aims at promoting the pro bono assistance through establishing a pro bono reporting requirement. Some jurisdictions with well-established pro bono systems use this tool either on voluntary or mandatory basis to emphasize pro bono responsibility and to gather data regarding pro bono activities. There are both advantages and disadvantages of mandatory vs. voluntary reporting requirements which are elaborated by the American Bar Association².

We believe that a voluntary pro bono reporting requirement for advocates would well meet the current state of reforms and better serve the purpose of developing prop bono services in Armenia. Therefore, we propose to establish a voluntary reporting requirement by amending relevant regulations of the Chamber of Advocates of the Republic of Armenia.

3. Set up the Pro Bono Service as a Condition for Receiving a Law License (short-term)

The pro bono service requirement for a bar admission would serve to address a country's urgent access to justice gap, at the same time helping prospective attorneys build valuable skills and imbuing in them the ideal of working toward the greater good.

In 2012 New York became the first U.S. jurisdiction to require pro bono service as a condition to become licensed for law practice. As emphasized by Chief Judge Lippman, "...The courts are the

¹ A similar requirement is set forth in the ABA's Model Rule 6.1, paragraph (b)(1).

² https://www.americanbar.org/groups/probono_public_service/policy/reporting_of_pro_bono_service.html

emergency rooms of our society -- the most intractable social problems find their way to our doors in greateden increasing numbers. And more and more of the people who come into our courts each day are forced to do so without a lawyer"¹. Each attorney has an obligation to foster the values of justice, equality, and the rule of law, and it is imperative that law students gain a recognition of this obligation as part of their legal training².

We propose to include an undertaking of 50 hours pro bono in the Armenian Bar admission requirements. This would have several beneficial outcomes. In addition to easing the gap in legal assistance, it will provide instructive and meaningful experiences to law students that will expose them to the pressing needs of the poor. This will instill a deeper understanding of the problems confronted by those segments of society that have little access to legal resources and institutions. These pro bono experiences will encourage law students to continue with volunteer pro bono services after they are admitted, and help prospective lawyers acquire hands-on skills under the supervision of committed members of the legal profession³.

4. Law school accreditation (long-term)

Another good policy recommendation could be to establish a law school accreditation standard on pro bono activities offered by law schools to their students. A law school should provide substantial opportunities to students for participation in pro bono legal services, including law-related public service activities. Credit-bearing activities may be part of a law school's "overall program of law-related pro bono opportunities so long as law-related non- credit

¹ Purposes and Goals. New York State Bar Admission: Pro Bono Requirement FAQs (September 24, 2015 rev.1). Available at: <https://www.nycourts.gov/attorneys/probono/FAQsBarAdmission.pdf>

² *Ibid.*

³ More beneficial outcomes can be found at ABA's relevant policy.

Available at: https://www.americanbar.org/groups/probono_public_service/policy.html

bearing initiatives are also part of the program. While certain law schools in Armenia provide for clinical education and pro bono opportunities, it should be expanded and enhanced. By establishing an accreditation standard, all law schools will strive to conduct clinical education and operate legal clinics or other mechanisms for students to provide free legal services. *We propose to review the law school accreditation standards as to include relevant provision on pro bono activities.*

5. Pro Bono Cases to Earn Credit toward Mandatory CLE Requirements (long-term)

This policy tool could be also used to improve the pro bono system in Armenia at a later stage. The idea is that attorneys who take pro bono cases are allowed to earn credit toward mandatory continuing legal education (CLE) requirements. While the amount of CLE credit that lawyers will be allowed to claim for pro bono can be determined based on the experience of developed pro bono systems¹, *we propose to discuss possibilities of implementing such a policy in Armenia.*

6. Corporate In-House Counsel (short-term)

This policy recommendation has a great potential to foster the development of pro bono services by supporting, enhancing and transforming pro bono efforts of in-house legal departments. Obviously, in-house pro bono has grown tremendously over the past decade. Many of the Fortune 500 companies and a majority of the Fortune 100 companies have either set up or are moving to establish formal pro bono programs for the lawyers in their legal departments. In addition, lawyers in smaller companies and legal departments engage in pro bono legal services through opportunities organized by Corporate Pro Bono (CPBO), ACC chapters, legal service providers,

¹ The most common rate that is used for earning such credits is 5 hours of service for each CLE credit.

bar associations, and other organizations¹.

Thus, we propose to study international best practices on corporate pro bono procedures and practices and introduce structured programs for law firms operating in Armenia. Without formalized procedures, individual attorneys are often left to fend for themselves, making pro bono work inefficient and exasperating. Associates may feel discouraged from taking on pro bono cases, especially if the firm has high billable hour requirements and pro bono work does not count toward total billables. Through structured support and supervision, firms can ensure that pro bono clients receive the same high-quality representation as paying clients².

7. Introduce Different Types of Pro Bono Mechanism (long-term)

In parallel to policy recommendations described above, we propose to study international best practices on different types of pro bono services, including but not limited to: casework for individuals; clinics; charities and not for profit organizations; public legal education; partnership working, and considering our country's context and the legal system develop projects to introduce or enhance some of the in the actual pro bono practices in Armenia.

8. Improve Lawyers' Attitude towards Pro Bono as a Professional Responsibility (long-term)

Finally, lawyers should acknowledge and develop high minds on the pro bono assistance as their ethical responsibility to promote access to justice and provide assistance to those in need. While there have been developed various mechanisms on how to better achieve

¹ Multijurisdictional Practice in the U.S.: In-House Counsel Pro Bono: Developed by Corporate Pro Bono. A global partnership project of Pro Bono Institute and the Association of corporate Counsel 2017, at 1.

² Pro Bono Guide. An Introduction to Pro Bono Opportunities in the Law Firm Setting First Edition: Stacy DeBroff, Esq. Second Edition: Kevin Lapp, NYU Law Student, Alexa Shabecoff, Esq., OPIA Director at 7.

this goal, *we propose to start with improving the awareness and understanding on advantages of pro bono work both for individual lawyers and law firms, in addition to above-referenced concrete policy recommendations.*

Some of pro bono benefits could be as follows: lawyers can gain experience, confidence, connections, and visibility both inside and outside their firms. More senior attorneys, particularly when they lead a firm's or office's pro bono program or a larger team on a significant pro bono case, can gain even greater visibility as well as case-management and law-firm leadership skills. Law firms' benefits include lawyering skills development, help recruit and retain new associates, improve firm-wide morale, enhance firm's reputation, community connections etc.

Conclusion

In this article, we have sought to demonstrate that policies addressing pro bono issues should be continuously reviewed and improved as to better contribute into the expansion of pro bono services in Armenia and support the establishment of pro bono culture therein.

With a right policy in place, we have concluded that a state can spread important messages about pro bono to enable the increase in pro bono participation. We support the idea that pro bono complements the state-funded legal aid and is part of a framework of services provided to meet the needs of low income and disadvantaged people. Within eight recommendations we have proposed in this article to be included in relevant policy documents, we have suggested to establish a pro bono responsibility for advocates as well as take actions to improve the professional community's attitude towards the pro bono assistance and its benefits not only for the state and society, but also for lawyers and law firms.