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***PROMOTING A PRO BONO CULTURE  
IN ARMENIA’S LEGAL PROFESSION:  
THE NEED FOR STRONG POLICIES AND HIGH MINDS***

“Pro bono” serves a vital and necessary role in the legal system and the legal profession’s contribution to access to justice for those who cannot afford to pay for legal services or access legal aid. The importance of ensuring “access to justice for all” in achieving sustainable development and the need to build just and inclusive societies which provide equal access to justice are highly recognized by the international community<sup>1</sup> and can be better achieved, inter alia, through developing various forms and instruments of legal aid, including the pro bono mechanism.

This Article discusses the current state of pro bono assistance in the Republic of Armenia (“Armenia”) and proposes policy recommendations, based on international best practices and experience of well-established pro bono systems, on how to boost the establishment of a pro bono culture in Armenia. Adjunct to publicly funded legal services, the Article argues that pro bono must never be viewed as a substitute for a properly funded legal aid system. Bearing in mind the importance of appropriate level of investment in the current legal aid scheme, the Government of Armenia must also take concrete steps both on policy development and implementation levels to achieve better results in its endeavors to promote the establishment of an effective pro bono system in Armenia.

Among other recommendations both short- and long-term, the Article strongly supports the recognition of pro bono work as an ethical responsibility of lawyers/attorneys as well as suggests implementing other effective policies in addressing pro bono issues in Armenia. Improving the understanding and attitude of the professional community to the pro bono assistance as an integral part of a lawyer’s role and the profession’s obligation to ensure access to justice would complement complex measures that are expected to be undertaken by the relevant authorities towards supporting and promoting pro bono culture in the Republic of Armenia.

*Key words: Pro bono, legal aid, access to justice, free legal aid, implementation of pro bono mechanisms.*

***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”<sup>2</sup>. 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 unclear<sup>3</sup>.

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”<sup>4</sup>. Bishops in the 12th century were required by scripture to assist indigent people with legal problems<sup>5</sup>, and subsequently required lawyers to provide services for spiritual, rather than

monetary compensation<sup>6</sup>. English law required lawyers to represent the poor in the 15th century<sup>7</sup>. 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 relatives<sup>8</sup>. 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 rights<sup>9</sup>.

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 poor<sup>10</sup>.

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-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”<sup>11</sup>.

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 inappropriate<sup>12</sup>.

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 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 means<sup>13</sup>.

It is worth mentioning Lorne Sossin’s notion that the issue of pro bono may be viewed from two perspectives - that of the lawyer and that of the client. From the perspective of the lawyer, the important question is whether there is ethical motivation to engage in pro bono<sup>14</sup>. From this point of view, situations in which those in need access free legal services provided by lawyers working at a law center or other non-profit organization, is not considered to be “pro bono” because the lawyer providing the service is paid to do so by the non-profit organization. In another situation, lawyers may give free initial consultations to prospective clients. This is not considered to be “pro bono” because the lawyer is acting in his/ her own commercial interests to cultivate new fee-paying clients.

If, however, the perspective of the client is paramount, Sossin continues, then meeting the client’s needs is the point of pro bono, irrespective of the lawyer’s motivation<sup>15</sup>. Hence, the moral or political

basis for a decision to provide free assistance will of course vary with the individual. Motivations may be based on charity, a sense of professional obligation, a conception of legal assistance as a right, an explicit social change agenda or some combination of these. There are also commercial considerations that may influence a lawyer or law firm undertaking to provide free or reduced cost legal services and the types of services offered<sup>16</sup>.

According to Esther Lardent, president of the Pro Bono Institute, need alone does not explain why firms and lawyers provide pro bono service. “Supporters of pro bono service typically focus on the compelling need for such assistance. But,” she continues, “research has shown that what makes good moral and ethical sense – happily – makes good business sense, too”<sup>17</sup>.

David Scott similarly makes a “business case” to the profession as to why pro bono is in the self-interest of the profession. His argument is based on four points, firms need to meet their regulatory requirements for professional compliance, promote the best interests of their firm, meet their clients’ needs, and elevate their firms’ presence in the community<sup>18</sup>.

In contrast, Deborah L. Rhode points out, inter alia, the “philanthropy” aspect of pro bono work. According to her, convincing lawyers that they will do well by doing good is a key strategy in sustaining charitable commitments, but to present public service purely in those terms is to compromise altruistic impulses and societal objectives. She concludes the article by expressing a concern: “When attorneys talk about pro bono, they generally speak in shorthand. “Publico” has dropped out of the discourse. We can afford to lose the Latin, but not the concept”<sup>19</sup>. Issues of lawyer’s motivation to do pro bono work is not the topic of this article though it is widely discussed in the scientific literature<sup>20</sup>.

There is a tendency to conceive of pro bono legal services as comprising, in the main, ad hoc decisions by an individual practitioner to provide advice or undertake a litigious matter for an individual client as part of their normal practice. As Jill Anderson and Gordon Renouf note in their article, such activities continue to form an important core of pro bono work; however, there are ways in which this model is not (and probably never was) an accurate depiction of the range of pro bono legal services. They provide today’s pro bono legal services as having the following features<sup>21</sup>:

- clients include groups, classes of individuals

and community organizations;

- ‘legal services’<sup>22</sup> include advice, transactional services<sup>23</sup>, negotiation, representation, assistance with mediation, community legal education and the preparation of policy submissions;

- pro bono service providers include lawyers employed by small and large private practices, corporations’ in-house counsel, lawyers working for government agencies and others;

- decisions whether to provide a pro bono service are not only made by individual practitioners but also by firms’ pro bono partners/committees/coordinators according to established policies, criteria and pro bono budgets;

- pro bono legal services are increasingly provided at locations other than solicitors’ offices or the courts. Locations include community legal centers (by seconders from firms as well as volunteers), on the premises of non-legal community service providers and in outreach premises established by a firm for the purposes of providing a shopfront legal service;

- pro bono contributions are increasingly being made as part of “multi-tiered” partnerships between firms and community legal services; practitioners are no longer on their own in locating pro bono cases, setting priorities and screening for appropriate matters. There are now several formal pro bono referral schemes operated by the Public Interest Law Clearing Houses, legal professional bodies and the courts. There is also a network of informal arrangements that results in pro bono referrals, especially arrangements between community legal centers and specific firms and counsel<sup>24</sup>.

*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 defined as having certain characteristics<sup>25</sup>. 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” and Legal Aid**

Legal aid is a key component in ensuring access to justice, and a core principle of development and rule of law, recognized in the UN Principles and Guidelines as

“an essential element of a fair, humane, and efficient criminal justice system”<sup>26</sup>. Although the UN Principles and Guidelines address legal aid in the context of criminal justice, the goals of ensuring fundamental fairness and inspiring trust in justice proceedings and their outcomes run across all spheres of justice<sup>27</sup>.

Access to justice is defined as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards,” and it is also seen as fundamental to the protection of human rights<sup>28</sup>. Legal aid plays a crucial role in enabling people to navigate the justice system, to make informed decisions, as well as to obtain justice remedies. It also makes a critical connection between populations and their justice systems and provides guidance on how to navigate the often difficult-to-understand justice system<sup>29</sup>.

In most countries, the right to legal aid is part of national legal frameworks - from constitutions to specific national laws and dedicated policies on legal aid. As the UN 2016 Global Study on Legal Aid Global Report (Global Report) suggests, while legal aid for criminal matters has been granted in most jurisdictions, through the constitution or other national laws; provision of state-funded legal aid in civil matters is relatively limited. In many States, it is provided through NGOs or through pro bono services by the private sector. However, States are increasingly recognizing the importance of also providing services, particularly for vulnerable populations, in some civil/administrative matters, such as family law cases, property disputes, access to government entitlements and social services, amongst others<sup>30</sup>.

The Global Report further discusses categories of legal aid mechanisms that States generally use to provide legal aid services. Those categories include: a) Public defender model – involves government salaried lawyers dedicated to providing legal aid services organized through the State or an independent authority. b) Assigned counsel/panel lawyers or ex-officio systems – also called the “judicare” model in some countries, involves the assignment of legal aid cases to private lawyers on either a systematic or an ad hoc basis. c) Contract services model – involves a contract with a lawyer, a group of lawyers, a bar association, or a non-State-affiliated organization (such as NGOs, community-based paralegals, university legal aid clinics, etc.) which provides legal aid services and is funded by the State. More often, countries establish systems that are a combination of the abovementioned public defender system, assigned counsel system

and/or contract service systems, resembling a mix of State, private and civil society providers, called “mixed-model” or “hybrid systems”. In addition, in many countries, civil society actors provide legal aid services directly to beneficiaries, which are funded independently from the State<sup>31</sup>.

It is often argued that adequate access to legal services is both a moral or legal right and a prerequisite to the proper functioning of the rule of law in a democratic society<sup>32</sup>. The state thus has an obligation to ensure that there are sufficient publicly funded legal services.

Melina Buckley points out some clear overlap between legal aid and pro bono though stating that they have developed out of different traditions<sup>33</sup>. She then describes early pro bono work by private lawyers that was largely based on two principles: charity and professionalism. Whereas, the rise of legal aid was based on a concept of rights, i.e., people are entitled to legal information and assistance. Public funding is an essential part of a government legal aid scheme as, in theory, it removes the need to rely on the “charity” of the profession and it gives the system public accountability. As a public social service, legal aid provided help in a more systematic, equitable and efficient manner than the earlier pro bono efforts had achieved, hence addressing the unmet legal needs of the poor was accepted as more of a government obligation than a professional responsibility<sup>34</sup>.

*We strongly believe that state-funded legal aid schemes in Armenia and elsewhere should be further developed and continuously improved and that the importance of appropriate level of investment in the legal aid scheme should be always recognized and implemented by national governments. Therefore, pro bono services should be adjunct to publicly funded legal services and cannot and should not be a substitute for publicly funded services. Rather, pro bono complements them and is part of a framework of services provided to meet the needs of low income and disadvantaged people.*

#### **“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 itself<sup>35</sup>. 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”<sup>36</sup>.

Historian James A. Brundage notes in his article that while legal 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 disadvantaged<sup>37</sup>. “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”<sup>38</sup>.

**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 work<sup>39</sup>. 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 arising from the license to practice law - is an important part of what distinguishes the practice of law as a profession<sup>40</sup>.

**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 advo-

cacy 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 laws<sup>41</sup>. 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 rights<sup>42</sup>.

**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 morale and, by extension, job performance<sup>43</sup>.

The abovementioned arguments are compelling and do support a special duty on the part of lawyers to ensure access to justice<sup>44</sup>. 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”<sup>45</sup>.

#### *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 studies<sup>46</sup>. Obviously, Armenia does not have a historic pro bono culture, where lawyers acknowledge the importance of the provision of free legal assistance. While this could be an important socio-cultural barrier, the availability of pro bono legal services is now increasing<sup>47</sup> 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 years<sup>48</sup>.

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”)<sup>49</sup> 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 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”<sup>50</sup>.

Pro bono-friendly provisions are also set forth in the Advocate’s Code of Conduct<sup>51</sup>. 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 assistance<sup>52</sup>.

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 provided<sup>53</sup>.

Certain Higher Education Institutes run legal clinics staffed by 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”<sup>54</sup> 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 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 years<sup>55</sup>.*

**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 basis*<sup>56</sup>.

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 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 alone*<sup>57</sup>.

**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 Association<sup>58</sup>.

*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 pro 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. jurisdic-

tion to require pro bono service as a condition to become licensed for law practice. As emphasized by Chief Judge Lippman, "...The courts are the emergency rooms of our society — the most intractable social problems find their way to our doors in greatened increasing numbers. And more and more of the people who come into our courts each day are forced to do so without a lawyer"<sup>59</sup>. 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 training<sup>60</sup>.

*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 profession*<sup>61</sup>.

**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 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 edu-

cation (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 systems<sup>62</sup>, *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, bar associations, and other organizations<sup>63</sup>.

*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 clients<sup>64</sup>.

#### **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 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.



<sup>1</sup>The 2030 Agenda for Sustainable Development recognizes “the need to build peaceful, just, and inclusive societies which provide equal access to justice and are based on respect for human rights.” Goal 16 highlights the importance of ensuring “access to justice for all” in achieving sustainable development.  
Available at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

<sup>2</sup>Black’s Law Dictionary, 4th ed., s.v. “pro bono publico”.

<sup>3</sup>“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.

<sup>4</sup>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.

<sup>5</sup>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.

<sup>6</sup>Lorne Sossin, “The Public Interest, Professionalism, and the Pro Bono Publico” (2008) 46 Osgoode Hall L.J. 131 at 135.

<sup>7</sup>Deborah L. Rhode, *Pro Bono in Principle and in Practice* (California: Stanford University Press, 2005) at 21.

<sup>8</sup>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.

<sup>9</sup><http://leaf.ca/legal-issues-cases-and-law-reform/>

<sup>10</sup>Lorne Sossin, Id. at 132.

<sup>11</sup>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.

<sup>12</sup>Supra, note 13 at 18-19.

<sup>13</sup>[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html).

<sup>14</sup>Lorne Sossin, “The Public Interest, Professionalism, and the Pro Bono Publico” (2008) 46 Osgoode Hall L.J. 131 at 135.

<sup>15</sup>Ibid.

<sup>16</sup>Jill Anderson and Gordon Renouf. “Legal Services ‘for the public good’”. *Alternative law journal*. Vol. 28, no. 1, February 2003 at 13.

<sup>17</sup>Esther F. Lardent, “Pro Bono Work is Good for Business,” *The National Law Journal*, March 7, 2001, see, *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 5.

<sup>18</sup>David Scott, Q.C., “Pro Bono Services by the Practicing Bar: The Business Case” (Address to Law Firm Managers, Petroleum Club, Calgary, Alberta, May 29, 2008), at 1-2.

<sup>19</sup>Deborah L. Rhode, *The Lawyer’s Role in a Contemporary Democracy, Promoting Access to Justice and Government Institutions, Rethinking the Public in Lawyers’ Public Service: Pro Bono, Strategic Philanthropy, and the Bottom Line*, 77 *Fordham L. Rev.* 1435 (2009) at 1452. Available at: <http://ir.lawnet.fordham.edu/flr/vol77/iss4/11>

<sup>20</sup>See, e.g., “What does pro bono publico mean to lawyers? A report on the findings of the Pro Bono Values Project” UQ Pro Bono Centre June 2016.

<sup>21</sup>Jill Anderson and Gordon Renouf. Id at 14.

<sup>22</sup>For discussion of the benefits of viewing legal services broadly see Renouf, G., “A Client Centered Approach to Access to Justice”, NSW Law and Justice Foundation, *Access to Justice Workshop*, July 2002 at <http://www.lawfoundation.net.au/access/workshop.html>.

<sup>23</sup>Including drafting services in relation to contracts, funding agreements, regulatory matters, corporate structure and tax issues, mainly for non-government organizations providing welfare, legal or other community services.

<sup>24</sup>Supra, note 18, at 14.

<sup>25</sup>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.

<sup>26</sup>See, e.g., the UN Principles and Guidelines (see footnote 2) recognize that: “Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.”

<sup>27</sup>Global Study on Legal Aid. Global Report. United Nations (UNDP, UNODC), October 2016, at 8.

<sup>28</sup>United Nations Development Programme, *Access to Justice Practice Note* (2004). United Nations Office on Drugs and Crime, *Access to Justice: Legal Defense and Legal Aid* (2006).

<sup>29</sup>Supra, note 28 at 8.

<sup>30</sup>Supra, note 28 at 24.

<sup>31</sup>Global Study on Legal Aid. Global Report. United Nations (UNDP, UNODC), October 2016, at 40-41.

<sup>32</sup> See, e.g. Connellan G., ‘The Rule of Law: Access to Justice is Not Optional’, in Victoria Law Foundation (ed.), *A Just Society: What Access to Justice Means to Twelve Australians*, Victoria Law Foundation Publishing, Melbourne, 1999, and Renouf G., above, ref 6.

<sup>33</sup> Melina Buckley, *Moving Forward on Legal Aid* (Ottawa: CBA, 2010) at 121, see, “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 4.

<sup>34</sup> Ibid.

<sup>35</sup> 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.

<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> 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.

<sup>39</sup> Supra, note 37 at 6.

<sup>40</sup> Patrick R. Burns. *The Rules and Pro Bono*. Reprinted from *Bench & Bar of Minnesota* (September 2006), at 1.

<sup>41</sup> Supra, note 37 at 7-8.

<sup>42</sup> Ibid.

<sup>43</sup> Deborah L. Rhode, *Pro Bono in Principle and in Practice: Public Service and the Professions* (Stanford: Stanford University Press, 2005) at pp. 29-31;

<sup>44</sup> 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.

<sup>45</sup> 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.

<sup>46</sup> *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.

<sup>47</sup> Ibid. at 39.

<sup>48</sup> Ibid. at 35.

<sup>49</sup> 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.

<sup>50</sup> Article 6 of the Law on Advocacy was amended with the mentioned new provision on 08.12.11 by HO-339-N.

<sup>51</sup> 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.

<sup>52</sup> Supra, note 49 at 39.

<sup>53</sup> Ibid.

<sup>54</sup> Currently, the Strategy is pending an approval by the Republic of Armenia’s Government.

<sup>55</sup> 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](https://www.americanbar.org/groups/probono_public_service/policy.html)

<sup>56</sup> 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>

<sup>57</sup> A similar requirement is set forth in the ABA’s Model Rule 6.1, paragraph (b)(1).

<sup>58</sup> [https://www.americanbar.org/groups/probono\\_public\\_service/policy/reporting\\_of\\_pro\\_bono\\_service.html](https://www.americanbar.org/groups/probono_public_service/policy/reporting_of_pro_bono_service.html)

<sup>59</sup> 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>

<sup>60</sup> Ibid.

<sup>61</sup> More beneficial outcomes can be found at ABA’s relevant policy.

Available at: [https://www.americanbar.org/groups/probono\\_public\\_service/policy.html](https://www.americanbar.org/groups/probono_public_service/policy.html)

<sup>62</sup> The most common rate that is used for earning such credits is 5 hours of service for each CLE credit.

<sup>63</sup> 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.

<sup>64</sup> 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.

**Տարևիկ Դավթյան**

ՀՀ արդարադատության նախարարության «Դատախիզական ծրագրերի իրականացման գրասենյակ» պետական հիմնարկի տնօրեն  
ԵՊՀ իրավագիտության ֆակուլտետի  
քաղաքացիական իրավունքի ամբիոնի դոցենտ, ի.գ.թ.

**Արվինն Հովհաննիսյան**

ՀՀ Ազգային Ժողովի փոխնախագահ  
ԵՊՀ իրավագիտության ֆակուլտետի  
քաղաքացիական իրավունքի ամբիոնի դոցենտ, ի.գ.թ.

**ԱՄՓՈՓՈՒՄ**

**«Pro bono» մշակույթի խթանումը Հայաստանում իրավաբանի մասնագիտության բնագավառում. ուժեղ քաղաքականության իրականացման և բարձր մտածելակերպի ձևավորման անհրաժեշտություն**

«Pro bono» անվճար իրավաբանական օգնությունը կարևոր դերակատարություն ունի իրավական համակարգում և իրավաբանի մասնագիտության միջոցով այն անձանց արդարադատության մատչելիության ապահովման գործում, ովքեր չեն կարող վճարել իրավաբանական ծառայությունների համար կամ այլ կերպ ստանալ իրավաբանական օգնություն:

Սույն հոդվածում քննարկվում են Հայաստանի Հանրապետությունում «pro bono» անվճար իրավաբանական օգնության առկա վիճակը և խնդիրները, ինչպես նաև ներկայացվում են այդ ոլորտի քաղաքականության բարեփոխման և պրակտիկայի բարելավման վերաբերյալ առաջարկություններ: Այդ առաջարկությունները հիմնված են «pro bono» անվճար իրավաբանական օգնության վերաբերյալ առաջադեմ փորձի և զարգացած համակարգերի ուսումնասիրության վրա և ուղղված են «pro bono» անվճար իրավաբանական օգնության մշակույթի զարգացմանը Հայաստանում:

Պետության կողմից անվճար իրավաբանական օգնության տրամադրման կառուցակարգի (հանրային պաշտպանի գրասենյակ) անհրաժեշտ և պատշաճ ֆինանսավորման հետ մեկտեղ, սույն հոդվածում հիմնավորվում է, որ ոլորտի իրավասու մարմինները պետք է ձեռնարկեն նաև կոնկրետ քայլեր թե՛ քաղաքականության մշակման, թե՛ պրակտիկայի բարելավման մակարդակներում, «pro bono» անվճար իրավաբանական օգնության արդյունավետ կառուցակարգ ներդնելու և կայացնելու համար:

Հոդվածում ներկայացվում են կարճաժամկետ և երկարաժամկետ առաջարկություններ, այդ թվում՝ սահմանել «pro bono» անվճար իրավաբանական օգնությունը որպես փաստաբանի էթիկայի կանոն, «pro bono» ծառայությունների մատուցման վերաբերյալ կամավոր հաշվետվության ներկայացման պահանջ տարեկան կտրվածքով, իրավաբանական կլինիկաների զարգացում և մի քանի այլ հաջողված կառուցակարգեր: Հոդվածն առաջարկում է նաև քայլեր ձեռնարկել «pro bono» անվճար իրավաբանական օգնության նկատմամբ փաստաբանների/իրավաբանների վերաբերմունքի ու մտածելակերպի դրական փոփոխության՝ այն որպես արդարադատության մատչելիության ապահովման գործում իրավաբանի մասնագիտական պարտականության ընկալման ուղղությամբ:

*Հիմնաբաներ- անվճար իրավաբանական օգնություն, արդարատության մատչելիություն, անվճար իրավաբանական օգնության մեխանիզմներ:*

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## РЕЗЮМЕ

*Поощрение “pro bono” культуры в юридической профессии в Армении:  
необходимость применения сильной политики и формирования высокой ментальности*

“Pro bono” бесплатная юридическая помощь играет важную роль в обеспечении доступа к правосудию для тех, кто не может оплачивать юридические услуги или иначе получить юридическую помощь. Важность обеспечения доступа к правосудию для всех в целях обеспечения устойчивого развития, а также формирование справедливого и открытого для всех общества, в котором будет обеспечен равный доступ к правосудию для всех, признается международным сообществом и может быть более эффективно реализован путем разработки различных форм и механизмов бесплатной юридической помощи, в том числе путем поощрения pro bono.

Настоящая статья представляет текущее состояние и проблемы pro bono бесплатной юридической помощи в Республике Армения, а также предлагает рекомендации по реформированию государственной политики и совершенствованию практики в этой области. Эти рекомендации основаны на результаты изучения наилучшего опыта стран с развитыми “pro bono” системами и направлены на поощрение “pro bono” бесплатной юридической помощи в Армении.

Помимо того, что государство должно продолжить предоставлять адекватное финансирование на предоставления бесплатную юридическую помощь через офиса государственного защитника, данная статья обосновывает, что полномоченные субъекты должны также предпринять конкретные шаги для улучшения политики и практики в этой области и ввести эффективный pro bono механизм в нашу систему.

В статье представлены краткосрочные и долгосрочные рекомендации, в том числе предоставление “pro bono” бесплатной юридической помощи в качестве правила профессиональной этики адвоката а также введение ряда успешных схем поощрения “pro bono”. В статье также рекомендуется принять меры по изменению менталитета и отношения адвокатов на “pro bono” и воспринимания его как профессиональной обязанностью адвоката обеспечить доступ к правосудию.

*Ключевые слова:* бесплатная юридическая помощь, доступ к правосудию, имплементация “pro bono” механизмов.