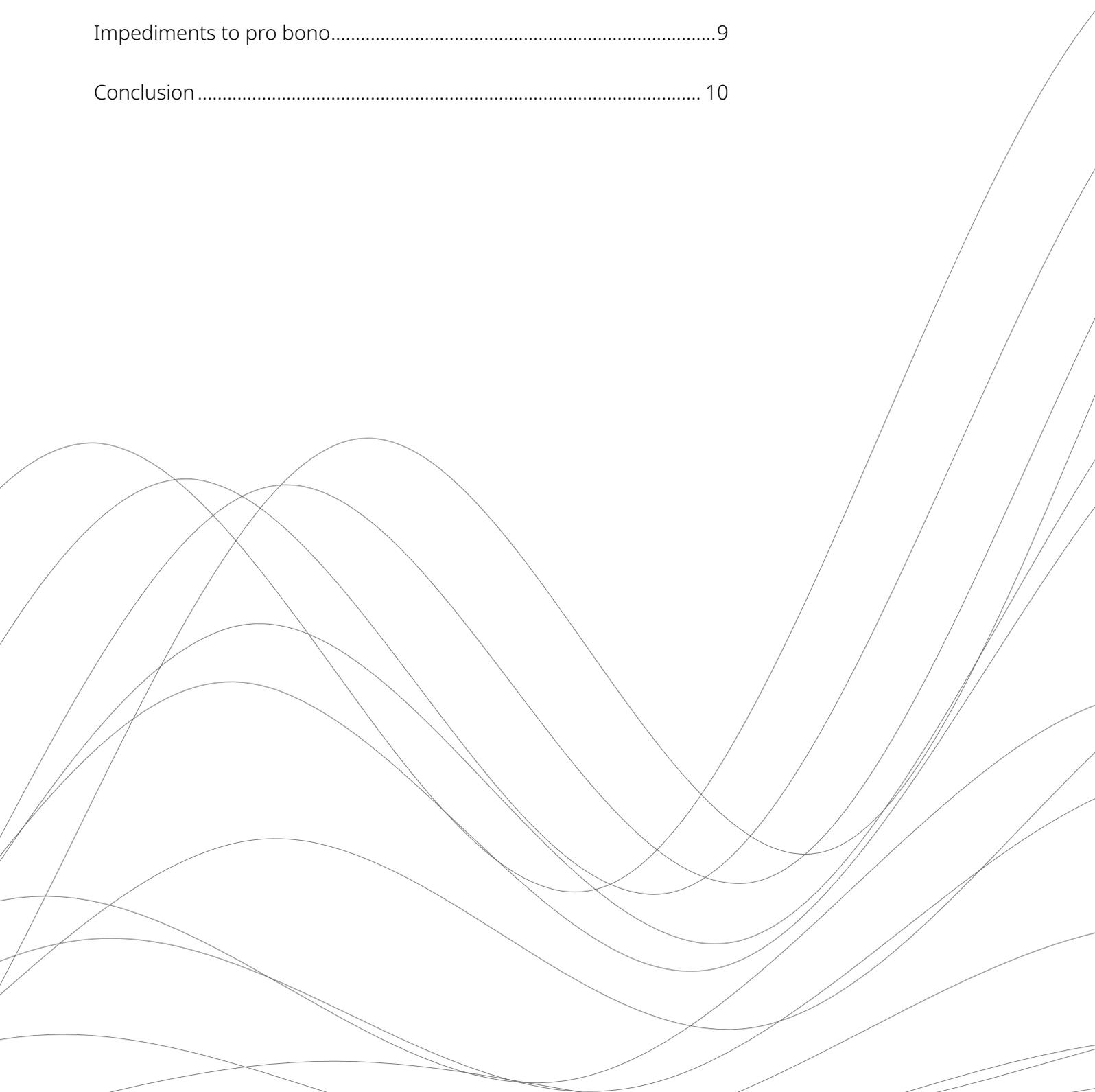


European Bars and Pro Bono



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About

“European Bars¹ and Pro Bono” is a report commissioned by the European Pro Bono Initiative, a group of Pro Bono Managers working for international law firms managing pro bono practices in Continental Europe. The report is written by Özgür Kahale (Director of Pro Bono, Europe, DLA Piper). The author wishes to thank and acknowledge the contributions made by PILnet and the European Pro Bono Alliance of Pro Bono Clearinghouses, Rachel Power, Danielle Curtis BL (Public Interest Law Alliance – PILA), Paul Yates and Karina Fletcher (Freshfields), Peter Braun (Dentons), Pro Bono Deutschland, Klara Kolomaznikova (White & Case), Doretta Frangaki (Reed Smith), Yulia Berezina, Arseny Tomilin and Daniela Koncierova (DLA Piper),

Tamas Barabas, Jessica Aguiar, Manuel Cartaxo and Teresa Morais Leitão (Pro Bono Portugal), Noanne Tenneson (Alliance des Avocats pour les droits de l’Homme), Giovanni Carotenuto, Constanza Danovi and Riccardo Favaro (Pro Bono Italia), and Flaminia Delle Cese (CILD), Filip Czernicki (Coordinator of the Warsaw Bar Association of Attorneys-at-Law pro bono programs), Jean-Luc Bédos (Founder of Droits d’Urgence), Pietro Denaro, Nicolas Patrick, Daniil Ukhorskiy and Victoire Stephan. Atanas Politov (Dentons) deserves a big thank you for coming up with the original idea. The views and opinions expressed are those of the author.

¹ The term ‘Bar’ in the context of this paper refers to professional bodies of lawyers in a given country. The Bar can have responsibility for the regulation of the legal profession or not. Membership can be mandatory or not.

Executive summary

This report, based on surveys conducted in 12 different European countries, highlights how different Bar Associations view and support pro bono work. Across the continent, there is a growing interest in and commitment to pro bono by law firms and individual lawyers – evidenced notably by the establishment of the European Pro Bono Initiative. As such, the report is a resource for European Bars to engage more robustly with lawyers undertaking pro bono projects and learn from their peers in other jurisdictions. Moreover, it is a resource for law firms and clearinghouses to start a conversation with Bars on how to develop meaningful partnerships.

The report sets out the business case for pro bono, highlighting how such projects connect lawyers to their communities and contribute to positive social change. Environment, sustainability, and governance policies have become a mainstay in the business world, and law firms that do not adapt their strategies risk getting left behind. European Bars can support firms and practitioners in helping them embrace a more environmentally and socially sustainable approach to the legal profession.

The report highlights the main ways in which Bars have taken action to support pro bono work. We note that some Bars have set up formal schemes to encourage lawyers to take on pro bono projects and provide resources to lawyers in carrying them out. In other jurisdictions, Bars have taken a less hands-on approach by setting up informal events, presenting awards to lawyers, and organising trainings.

Finally, the report considers some of the legal impediments to pro bono work in Europe. In some jurisdictions, Bars have rules against providing legal services for free. This is generally intended to prevent unfair competition. Nonetheless, we recommend context-sensitive measures that leave the possibility of pro bono support for the most vulnerable.

We do not suggest that pro bono is a panacea. Nonetheless, it provides a myriad of benefits to local communities, vulnerable people, as well as the lawyers who undertake the work. We hope this resource will provide the impetus for European Bars to take this valuable opportunity.

² Austria, Greece, Czech Republic, Germany, Hungary, Italy, France, Portugal, Slovakia, Russia, Ireland and Poland.

Introduction

Article 6 (3)(c) of the European Convention on Human Rights guarantees the right to legal assistance in some circumstances where the defendant has insufficient means to pay for legal assistance, therefore, in most European countries, government-backed funding is available to provide free legal advice for criminal and civil matters alike for those who cannot pay.

As a result of legal aid being widely available, the history of pro bono in Europe is fairly recent and growing. Many US and UK law firms with strong pro bono cultures face a landscape that is diverse and different to their homeland when trying to expand their pro bono practices in Europe. In some European countries there are barriers to lawyers providing free legal advice, and restrictions on lawyers about who they can represent. For example under Article 82 of the Lawyers' Code of Conduct in Greece, lawyers are prohibited from providing legal services free of charge or at a very low cost, except if the client is a close relative or another lawyer and the service relates to a personal matter. It is argued that these restrictions exist to prevent unfair competition but, inadvertently, they also present an obstacle to pro bono. In some countries the Bars are indifferent to the efforts of lawyers who would like to do pro bono and in other countries, Bars actively

and enthusiastically support their members' efforts to honour the profession's ethical obligation to provide representation to those who cannot access justice. Although most pro bono movements are grassroots efforts that do not require institutional support from the top, Bars' attitudes towards pro bono have an influence on how fast and big the pro bono culture develops in a given country. This report, by highlighting the positive influencers in this space, hopes to honour those Bars that are making an active effort to support pro bono to draw together and connect all lawyers, using law as an agent of positive social change.

Different Bars employ different methods to honour and promote pro bono and it varies from country to country. Some Bars implement their own formal pro bono schemes, others give away awards, some mention the ethical obligation of lawyers to do pro bono in their codes of conduct and others grant financial support. The report will address all these categories by giving examples to display a breath of options available to Bars that are considering taking the first step to support pro bono or to those that want to increase their support. The final part of the report will discuss what barriers there are for pro bono in some countries and how they can be overcome.



The value of pro bono

Pro bono work facilitates the mobilisation of the legal community in support of the most vulnerable people. Reuniting hundreds of lawyers for the public interest contributes to systemic change within the justice system. Large firms will often be able to support projects that are otherwise overlooked due to being too expensive and complex for civil-society organisations. Collaboration with the private sector – where for-profit lawyers are inevitably well connected – on issues such as climate change can provide the impetus for meaningful progress despite the formidable obstacles.

Additionally, pro bono work provides crucial support to non-profit organisations. For what lawyers working in the for-profit sector may lack in their knowledge of human rights law, they make up with knowledge in areas such as employment and company law. Advising non-profits on new hires or expansion can help them grow in ways that was previously too costly.

There are three issue areas in which pro bono most clearly demonstrates its value. First, by supporting NGOs, UN agencies, and less developed countries, pro bono projects can comprehensively advance the Sustainable Development Goals. For instance, projects within the environmental sector, from fighting climate change to promoting biodiversity, are directly linked with SDG 13. Pro bono clinics that support victims of domestic violence further the goal of achieving gender equality and empowering all women under SDG 5.

Second, by working pro bono, lawyers and firms can help advance the anti-racism movement. Ethnic minorities are at greatest risk of discrimination in

employment and education, yet they often face significant obstacles in accessing justice. Pro bono projects can support racial equity on a case-by-case basis by providing free legal representation or advice on these matters. More importantly, by holding training programmes alongside community organisations lawyers can educate people about their rights and promote systemic change.

Third, pro bono work can assist in addressing the unprecedented levels of human displacement. The Afghanistan crisis has sparked an acute need for additional support for refugees and those seeking family reunification or humanitarian visas. Moreover, as the climate crisis intensifies, the number of people fleeing unliveable conditions is set to grow dramatically. Providing legal assistance to displaced people significantly increases their chances of a favourable asylum decision and of finding the support that they need.

Across all issue areas, pro bono work helps lawyers forge closer links with their communities. For instance, the pro bono days or weeks organised by Bars across Europe allow lawyers to interact with members of their community that could normally not afford to solicit their services. These connections are crucial for lawyers to be in touch with of the state of access to justice in their jurisdiction. Additionally, pro bono projects are increasingly attracting in-house lawyers who have previously had limited engagement with public interest work. A larger and more diverse group of lawyers engaged in pro bono is certain to improve access to justice across Europe.

Formal pro bono schemes set up by Bars

In 2004, the Bar of Ireland set up the Voluntary Assistance Scheme which provides NGOs direct access to barristers with expertise in the relevant area for pro bono legal support. It works as a clearinghouse that matches NGOs with barristers. The Voluntary Assistance Scheme also collaborates with other clearinghouses in Ireland such as PILA, which connects NGOs with law firms, barristers, in-house teams and universities.

In November 2020, PILA launched the Pro Bono Pledge, which provides a common definition for pro bono, a commitment to a minimum aspirational target of 20 pro bono hours per lawyer per year and a mechanism to benchmark progress through annual reporting of anonymous pro bono data. To date, there are 50 law firms, 36 Barristers, 2 in house legal teams, 6 individual solicitors signed up to the Pledge. This represents close to 2,500 legal practitioners. 2021 marks the first year of recording signatories while 2022 will be the first year for reporting on the Pledge. PILA is seeing an increased interest in pro bono and an increasing engagement from NGO's seeking assistance. The Pledge has been endorsed by the Bar Council of Ireland and the Law Society of Ireland.

Similarly, in Poland, the Warsaw Bar³ established a Pro Bono Assistance Centre which serves indigent people who cannot access legal aid. The Warsaw Bar signed agreements with several referral organisations and institutions who agree to vet and refer indigent people to the Centre. The Pro Bono Assistance Centre works as a clearinghouse that matches people in need with lawyers who volunteer.

In 2009, the Paris Bar supported the establishment of the first French clearing house called *Alliance des Avocats pour les Droits de l'Homme*. In 2011, the Paris Bar, in collaboration with Droits d'Urgence, created a foundation called the *Barreau de Paris Solidarité* which supports legal and community projects and promotes actions of general interest aimed at indigent people. The *Barreau de Paris Solidarité* provides financial support to NGOs that develop specific pro bono initiatives in the Paris Region. The support also includes subsidies for lawyers who wish to travel abroad to do pro bono work.

The Hungarian Bar also has a formal scheme run by the General Secretary of the Budapest Bar acting as the coordinator for pro bono efforts of the Budapest and other Hungarian Bars.

Pro bono awards by Bars

Various Bars in Europe give away pro bono awards to recognise and celebrate the work of lawyers donating their time and expertise in the public interest space. As an illustration, the Czech Bar issues a "Pro Bono Award" during the annual "Lawyer of the Year" event to promote pro bono work among attorneys. The Hungarian Bar, in collaboration with the global pro bono clearinghouse PILnet, gives away the "Best Pro Bono Law Firm and Best Pro Bono Lawyer" awards every year. Since 2008, every year the Polish Bar awards the "Crystal Heart Award" to honour lawyers who have made great contributions to pro bono.

In Russia, the Russian Bar provides a certificate of honour on a regional level along with specific regional awards such as the "Pro Bono Lawyer" award in the Ulyanovsk Region or the "Free Legal Aid" award as part of the "Lawyer of the Year" event in the Samara Region.

In France, since 2011, the Paris Bar through the *Barreau de Paris Solidarité* organises an event called *Trophées Pro Bono* to reward and highlight the actions undertaken by Parisian lawyers for pro bono. The award is divided into several categories "Junior Project," "Individual Work," "Team Work," "Lawyer's Trophy" and the "Jury's Trophy."

³ Reference is made to Warsaw Bar Association of Attorneys-at-Law.

Supporting the work of the pro bono clearinghouses

A pro bono clearinghouse is usually a charity/association/nonprofit that connects people or NGOs in need of pro bono support with lawyers or law firms that offer pro bono services. Many Bars in Europe support their national clearinghouses. As an illustration, in the Czech Republic, in 2008, the nonprofit organisation Pro Bono Alliance established a pro bono clearinghouse known as the Pro Bono Centre. The latter is actively supported by the Czech Bar Association.

In Slovakia, the pro bono clearinghouse for civil society organisations is run by Pontis Foundation as *Advokáti Pro Bono*. The *Centrum právnej pomoci*, a government agency operating under the Ministry of Justice of the Slovak Republic,

serves individuals seeking help. The Slovak Bar keeps a register of all lawyers that provide pro bono legal services via the *Centrum* on its website. The Hungarian pro bono clearinghouse operated by PILnet Foundation, since 2002, collaborates with the Hungarian and the Budapest Bars actively. In Ireland, both the Bar of Ireland and the Law Society regularly communicate and participate in pro bono conferences organised by the Irish clearinghouse PILA.

In 2018, the representative of the Rome Bar Association attended the first ever Italy Pro Bono Day and in 2019, the President of the Milan Bar Association took part in the closing ceremony of the Italy Pro Bono Day organised by Pro Bono Italia. In 2021, Pro Bono Italia held a webinar on legal pro bono work in Italy, under the patronage of the Milan and the Rome Bar Councils.

Training

In some countries, the Bars offer training to lawyers who want to engage in pro bono activity to develop their skills and competencies. For example, the Bar of Ireland offers training as part of the Voluntary Assistance Scheme.

In France, the *Barreau de Paris Solidarité* teaches classes on public interest law to aspiring lawyers

of the Paris Bar School and encourages them to volunteer with the Bar School's Legal Clinic.

The German Bar's Legislative Committee on Corporate Social Responsibility and Compliance hosts workshops around CSR, compliance and pro bono work during the Bar's annual conference.

Pro bono projects organised by Bars

Certain Bars in Europe not only encourage their lawyers to do pro bono but also organise pro bono projects themselves and recruit their members to participate.

One of those projects is a collaborative effort between several Bars. The German Bar, along with the Council of Bars and Law Societies of Europe, established a charitable organisation called ELiL to give legal advice to refugees on the Greek island of Lesbos. ELiL offers work placements for law students as part of their legal studies. The project, in place since 2016, is attracting more and more partners from Europe.

The Milan and Rome Bars promote access to justice by way of setting up citizen helpdesks (*Sportelli del Cittadino*) aimed at providing citizens not with legal advice as such, but with information on their rights and obligations. More tangible initiatives also have been launched by the Milan *Sportello*, such as a partnership for the protection of children's rights, and ad hoc help desks for victims of gender-based violence or extortion.

In 2019, the Budapest Bar organised a pro bono day with 117 lawyers providing free legal advice to individuals. Based upon the great success of the event, the Bar decided to run the event every year.

In Poland, the Warsaw Bar runs a point of free legal advice at the heart of Warsaw, where dozens of legal advisors give free legal advice.

On a quarterly basis, the Russian Bar holds the international Unified Day of Free Legal Aid, where representatives of the judicial, executive and legislative authorities, along with lawyers, notaries, representatives of legal businesses, the youth movement of the Russian Bar Association and university lecturers act as consultants to indigent people. Annually, within this project, more than 100,000 citizens of Russia receive free legal aid in all regions of Russia as well as in many foreign countries.

Several local associations of the German Bar offer legal advice hours, run by volunteer lawyers who serve as the first point of contact for people seeking legal advice. These offers are usually focused on special legal areas or specific situations. One example is the social law bus, organised as part of the annual conference of the German Bar in Leipzig in 2019.

The Slovak Bar organises an annual event and ad hoc pro bono consultations. During the pandemic, the Slovak Bar launched a two-week project during which lawyers who signed up provided pro bono legal services.

In France, once a year the *Barreau de Paris Solidarité* gathers volunteer lawyers to give pro bono advice in a temporary building installed for a week next to Paris' City Hall as part of an initiative called *L'Avocat dans La Cité*. The Paris Bar, in collaboration with an NGO *Droit d'Urgence*, also runs the *Bus de la Solidarité* project. This involves lawyers being placed in a bus where they travel around the Paris region and offer free legal advice to Parisians, mainly in the field of labour, family, housing and migration law.

Impediments to pro bono

In some countries in Europe, certain provisions of the Lawyers Code of Conduct either explicitly prohibit lawyers from providing legal services free of charge or are interpreted to imply such a prohibition.⁴ Breach of such a provision can cost the lawyer a disciplinary sanction or even disbarment. We understand that most of these provisions exist to ensure fair competition between lawyers and prevent some lawyers from getting an advantage over others by giving away free legal advice.

Moreover, in some countries in Europe, the same Lawyers Code of Conduct could also contain provisions about the ethical responsibility of the lawyer. Similarly, the International Bar Association calls upon lawyers and law firms to undertake pro bono work as an integral part of their professional activities. These two positions can create conflicting messages for lawyers and also hinder the growth of pro bono in a country.

In those circumstances, the Bar could play a crucial role in making a clear distinction so lawyers do not get conflicting messages. In countries where there are provisions around competition between lawyers, prohibition to advertise legal services and mandatory fee charging between a lawyer and a client, the Bar can play an important role by clarifying these statutory restrictions and the extent to which they are deemed to apply. Otherwise, the latter may be interpreted as impediments to pro bono and prevent lawyers from helping indigent people.

Lawyers might be asked to refrain from giving free legal advice to clients who are able to pay. Clarifying the fact that lawyers can do pro bono in favour of indigent individuals who cannot access legal aid will help the development of a pro bono culture in a country. For instance, the Italian and German Codes of Conduct for Lawyers both have provisions which can be interpreted as impediments for lawyers giving free legal advice. Yet, to date, neither the Rome and Milan Bars Associations nor the German Bar have made explicit remarks or issued specific guidelines about lawyers giving pro bono legal assistance and possible infringements of the Codes of Conduct.

Conversely, the Portuguese Bar Association upholds that it supports the provision of pro bono legal services as a spontaneous and discrete expression of interpersonal solidarity. However, lawyers are advised to exercise this right with prior authorisation. The Portuguese Bar has already taken administrative action to investigate possible unlawful provision of pro bono services.

⁴ Article 37 of Code of Conduct for Italian Lawyers, Article 21 of the Rules of Professional Practice in Germany, Article 82 of the Lawyers' Code of Conduct in Greece have been interpreted as having provisions which could be impediments to lawyers doing pro bono.

Conclusion

In some countries in Europe, pro bono is not seen as an essential element of the legal profession because it is assumed that legal aid is the answer to all access to justice problems; however, this may not be the case everywhere. There might be certain shortfalls in the way legal aid operates. Pro bono is not the solution to a badly organised legal aid system. The solution is a better organised legal aid system. However, whatever the extent of the legal system, it can always be complemented by pro bono in the public interest. Indeed, pro bono can help to promote and bolster the development of legal aid. The legal profession has an ethical responsibility to make sure vulnerable people do not suffer, whatever the circumstances.

Pro bono could never compete with legal aid or compensate for the lack of legal aid because it is a voluntary scheme and therefore it cannot be relied upon as a permanent solution. Nevertheless, if pro bono is enabled and encouraged by the Bar, it can work hand in hand with legal aid to ensure as many people as possible receive the legal support they need to access justice.

It is governments' responsibility to ensure everyone has access to justice. In Europe, most governments achieve this goal by way of providing legal aid. Some Bar Associations see pro bono as a competition to legal aid and think that pro bono may give governments a reason to diminish legal aid. This may constitute an unfounded fear or an overcautious reaction because in many countries in Europe, the commitment of the state for legal aid is a part of their constitution and cannot be negotiated or de facto restricted. Legal aid is underpinned across the Council of Europe Member States by the European Convention on Human Rights. Furthermore, the volume of pro bono is substantially smaller compared to legal aid and its availability is volatile (pro bono is only available when law firms or lawyers have the time and the expertise). Therefore, promoting pro bono would hardly have a substantial impact on the legal aid system overall.

In Europe, there is a growing interest and commitment to pro bono. Although some Bar Associations have not yet taken any official stance on the matter, there is an emerging need and prerequisite to do so to protect the most vulnerable. The Bar has an important role to play in guiding the lawyers and upholding the ethical obligation of the legal profession.

