

PRACTICE OF PRO BONO LEGAL SERVICE IN HUNGARY

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1. INTRODUCTION

This study aims to capture the current trends of pro bono legal practice in Hungary by shifting the focus from the corporate social responsibility approach of law firms to the individual views and needs of lawyers. Since 2005, the PILnet Foundation has been promoting pro bono and public interest law in Hungary and therefore seeks to stay well-informed of the local practice. As recommended by the Pro Bono Manual of the Foundation,¹ an online survey was launched to map pro bono practices and to collect the views of Hungarian lawyers on how they relate to pro bono. The survey was circulated within the partnership network of the PILnet Foundation as well as in informal groups of practising lawyers in March 2022. The views of 107 independent and employed lawyers as well as legal counsels summarized in this study can be of interest to lawyers, law firms, bar associations, decision-makers, and stakeholders from all fields.

2. WHAT IS PRO BONO?

Pro bono legal assistance is professional legal work undertaken voluntarily, without payment for the public good, whereas it is delivered with the same standard of quality and ethics as any other paid work. It is similar to state-subsidized legal aid in a sense that it provides access to lawyers for those who otherwise would not be able to access them; however, it does not exempt the government from its obligation to ensure access to justice for all. Accordingly, pro bono is not supposed to substitute legal aid but rather to complement the state-run system by filling up the gaps. The Recommendation of the Committee of Ministers of the Council of Europe creates connection between the two forms of legal assistance when it requires states to inform an applicant deemed ineligible for legal aid about the available alternatives such as pro bono legal services and legal clinics.²

There are different actors who can play a role in the establishment and strengthening of pro bono practice, depending on the jurisdiction and specific rules of the legal profession. First, the lawyers, as qualified professionals providing legal services, who can offer their services for free or accept such requests from clients. Second, international and domestic law firms,

¹ Pro Bono Manual, PILnet Foundation, 2011, pp. 36. available at https://www.pilnet.org/wp-content/uploads/2020/08/Pro-Bono-Handbook_A-Guide-to-Establishing-a-Pro-Bono-Program-at-Your-Law-Firm.pdf

² Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, 2021. para. 14.

which can set pro bono schemes and encourage their employees to participate with different incentives. Third, bar associations, as self-governing, professional bodies of lawyers, which can encourage their members to take on pro bono projects by setting up formal schemes, presenting awards or organising professional events and trainings.³ Fourth, civil society organisations which can promote pro bono via advocacy, awareness-raising, or training. Fifth, law firms, individual practitioners, or civil society organisations who can establish an intermediary, so-called clearinghouse to “facilitate the provision of pro bono legal advice by acting as a broker between people or organizations who need legal assistance and lawyers who are willing to help”.⁴ All these actors can cooperate and support each other to foster pro bono practices and enhance access to justice for all including disadvantaged and vulnerable people.

3. THE CONCEPT OF PRO BONO LEGAL PRACTICE IN HUNGARY

3.1. HISTORICAL PERSPECTIVE

In Hungary, as in other European countries, the culture of pro bono has begun to take root recently. Although the provision of free legal services has a long tradition in Europe, due to the introduction of the state-sponsored legal aid systems in the 20th century, legal aid was not considered “the honourable duty of the profession but rather the obligation of the state”.⁵ After the 2nd World War, the lawyers were forced to join the so-called lawyers’ working community and provide free legal aid for the workers on “communist Saturdays”, when all kinds of professionals were strongly encouraged to volunteer to build communism together. Following the transition to democracy, in 2003, the Hungarian Parliament passed a law on legal aid establishing a state-subsidized, dual track legal aid system where representation by the defence counsel at criminal procedures is organised separately from all other forms of legal aid.

By understanding the opportunities unrevealing due to the emerging presence of international law firms and lawyers in Budapest, PILnet Foundation played an important role in introducing pro bono legal practice in Hungary. In 2005, they launched the Central and Eastern European Pro Bono initiative aiming at establishing “pro bono practice on a clear,

³ European Bars and Pro Bono, PILnet Foundation, 2021, pp.3.

⁴ Pro Bono Manual, PILnet Foundation, 2011, pp.19. available at https://www.pilnet.org/wp-content/uploads/2021/11/A11671_European_Bars_and_Pro_Bono_Booklet_V2.pdf

⁵ Lamin Khadar: The growth of pro bono in Europe, PILnet Foundation, 2016. pp. 6. available at https://www.pilnet.org/wp-content/uploads/2020/03/Pro_Bono_Final_Report_V2-1.pdf

institutionalized basis in central Europe”.⁶ One year later, PILnet convinced 9 international law firms with offices in Hungary to endorse a “Pro Bono Declaration” and commit to the idea that it is “an ethical responsibility to ensure that all members of the Hungarian society are provided with legal services”.⁷ On 15 December 2006, PILnet officially launched its first clearinghouse in Hungary⁸ and supported projects like the Polish Constitutional Court claim for the Helsinki Foundation for Human Rights.⁹ Since 2011, in cooperation with the Hungarian Bar Association, PILnet has been acknowledging the outstanding contribution of legal practitioners by presenting the annual Hungarian Pro Bono Award to an independent lawyer and a law firm, respectively.¹⁰

PILnet has launched its children’s rights program recently and made specific efforts to improve equal access to lawyers for children suspected or accused of crime in Hungary as an implementing partner of the European Union funded project “CLEAR-Rights: enhancing legal assistance for children in Europe”.¹¹ Its unique approach focuses on the provision of quality and specialized government-funded legal aid for children in conflict with law to be complimented but never substituted by pro bono legal assistance. Initiating discussions about the relationship between legal aid and pro bono in Hungary seems to be crucial as a recent study commissioned within the framework of the CLEAR-Rights project revealed that Hungarian lawyers consider legal aid as pro bono legal service in practice because of the low fees provided by the state and the high number of hours invested in such cases.¹²

3.2. ANALYSING THE LEGAL FRAMEWORK

As of October 2022, pro bono legal practice is not regulated in Hungary, neither by law nor by an act of the Hungarian Bar Association. Nevertheless, if we would like to classify pro

⁶ Ibid. pp. 18.

⁷ Ibid.

⁸ The Clearing House is available at <https://www.pilnet.org/our-work/europe-eurasia/hungarian/>

⁹ Lamin Khadar: The growth of pro bono in Europe, PILnet Foundation, 2016, pp. 18.

¹⁰ More information about the awards and the list of awardees are available at <https://www.pilnet.org/our-work/europe-eurasia/hungarian/hungarian-pro-bono-awards/>

¹¹ The project “CLEAR-Rights”, running from January 2021 to December 2022, is coordinated by the Regional Office of Terre des Hommes in Europe in Hungary, in collaboration with 5 partners in the 5 focus countries: Défense des enfants International in Belgium, l’Alliance des Avocats pour les Droits de l’Homme in France, PILnet Foundation in Hungary, DCI-ECPAT in the Netherlands and Terre des hommes Romania in Romania. You can find more information about the project at <https://www.pilnet.org/our-work/childrens-rights/>

¹² Zsuzsanna Rutai: Review of practices and gaps in the legal aid system for children in Hungary, PILnet Foundation, 2022, pp. 10. available at <https://www.pilnet.org/wp-content/uploads/2022/04/Rutai-2022-Review-of-practices-and-gaps-in-the-legal-aid-system-for-children-in-Hungary-final.docx.pdf>

bono legal practice according to the current Hungarian legal framework without restrictive interpretation, we can identify two possible scenarios.

First, since the power of attorney including the price is subject of a free agreement under the Act LXXVIII of 2017 on Legal Practice, legal service provided for 0 HUF can be defined in an agency contract between the lawyer and the pro bono client (be it a natural person or organisation).¹³ The agency contract – except the legal advice - must be concluded in written form, although the oral agreement does not affect the validity of the agency but in such cases the burden of proof concerning the content of the agency rests with the lawyer.¹⁴ In general, the lawyer has to pay value added tax and issue an invoice which proves that service has been provided in exchange for a certain amount. Unfortunately, the Act CXXVII of 2007 on Value Added Tax does not exclude pro bono legal services from the scope of the law, therefore the lawyer has to comply with the formal requirements and issue an invoice even though the VAT would correspond to 0 HUF.

Furthermore, it is possible as a second scenario that the lawyer provides legal counselling and prepares documents for an organisation which hosts them as a volunteer for public interest. In this case, pro bono is excluded from legal practice by the 2§ (a) of the Act on Legal Practice and covered by the Act LXXXVIII of 2005 on volunteer activities for public interest. Accordingly, volunteering for public interest is an activity provided without remuneration for any of the host organisations listed by the Act, including civil society organisations.¹⁵ The host organisations are obliged to register with the competent ministry and lay down the framework of the volunteer agreement in a contract. Nevertheless, the array of services to be provided as a voluntary activity is limited to legal advice and document drafting and the beneficiary needs to be the host organisation.¹⁶

3.3. APPROACH OF THE HUNGARIAN BAR ASSOCIATIONS

As it was mentioned above, the Hungarian bars have never issued any official statement or standing on the conditions or framework of pro bono, but they promote the provision of legal services on a pro bono basis via an informal approach. The Budapest Bar organised the 1st Pro Bono Day in 2019 on the occasion of the European Lawyer Day, followed by the 2nd

¹³ Act LXXVIII of 2017 on Legal Practice, 28 §(1) and 30 §(1).

¹⁴ Act LXXVIII of 2017 on Legal Practice, 29 §(2).

¹⁵ Act LXXXVIII of 2005 on volunteer activities for public interest, 2 § (1).

¹⁶ Act LXXVIII of 2017 on Legal Practice, 2 § a).

edition in 2021, when the volunteering lawyers and legal counsels provided legal advice for people who otherwise cannot afford it.¹⁷ The issues could be related to a wide range of legal fields such as private law, company law, family law, criminal law, labour law, copyright law, heritage law, and the law of civil society organisations. In 2020, several regional bar associations launched pro bono legal assistance initiatives whereas natural persons could contact them through phone and get their legal questions related to the coronavirus situation answered.¹⁸

In April 2022, pro bono initiative launched by an individual lawyer was endorsed by the Budapest Bar and the Hungarian Bar to provide legal counselling for people fleeing the war in Ukraine.¹⁹ Around 200 lawyers gathered to reply questions related to refugee status, administration, labour law arriving by email, while others volunteered to translate and help with transportation and accommodation as well as provided in-kind donations in cooperation with other civil society organizations. The Budapest Bar launched the programme ‘Second Professional Home’ where they support Ukrainian lawyer’s settlement in Hungary and their integration into the lawyers’ society.²⁰

4. LAWYER’S SURVEY ON THE PRACTICE OF PRO BONO IN HUNGARY

4.1. ABOUT THE SURVEY AND THE RESPONDENTS

In March 2022, the PILnet Foundation launched an anonymous online survey among Hungarian lawyers to map pro bono practices in Hungary and to understand how Hungarian lawyers relate to pro bono, covering both positive and negative factors affecting this relationship. The survey was circulated within the partnership network of the PILnet Foundation as well as in informal groups of practising lawyers. Overall, 107 responses had been submitted to the survey which can be considered high interest in the Hungarian context and in line with the findings of a recent research in the field of children’s access to justice

¹⁷ More information is available at the website of the Budapest Bar at <https://bpugyvedikamara.hu/probono-nap/>

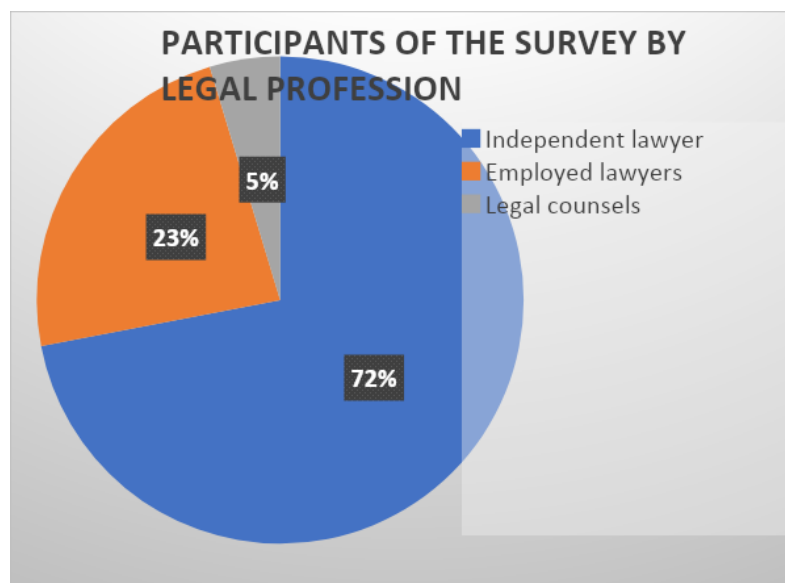
¹⁸ Information about the different initiatives is available at the following sites (in Hungarian):
<http://ugyvedforum.hu/cikkek/2020/03/koronavirus-ugyvedi-osszefogas-a-veszelyhelyzetben-elo-emberekert-dr-becker-tibor-a-komarom-esztergom-megyei-akciojukrol>
<https://www.gymsmo.hu/print/cikk/ingyenes-telefonos-jogsegelyszolgalat-az-ugyvedi-kamaranal.html>
<https://www.szekesfehervar.hu/ingyenes-ugyvedi-segitsegnyujtas-a-fejer-megyei-ugyvedi-kamaratol>

¹⁹ Official page of the Budapest Bar offering pro bono legal assistance to people fleeing the war in Ukraine: <https://bpugyvedikamara.hu/magyar-ugyvedseg-ukrajnaert/>

²⁰ Report of HVG on „Közel 200 magyar ügyvéd jelentkezett, hogy segítsen az Ukrajnából elmenekült embereknek” (Almost 200 lawyers volunteered to help people fleeing from Ukraine), 01/04/2022, available in Hungarian at https://hvg.hu/itthon/20220401_Ukrajna_Karpatalja_haboru_menekultek_ugyvedek_segitseg_kamara_Szajbert

supported by PILnet Foundation which found that “lawyers have a well-formulated opinion about pro bono legal assistance”.²¹

Out of the 107 legal practitioners participating in the survey, 77 of them declared to be working as independent lawyers, 25 as employed lawyers, and 5 as legal counsels. In Hungary, lawyers are legal practitioners who completed their university education and professional training, then successfully passed the bar exam and had been admitted to a regional bar association. Lawyers can pursue the legal practice autonomously (independent lawyers), can be employed by an independent lawyer or law firm (employed lawyers) or practice the legal profession within the framework of their employment relation (legal counsels).²² The data concerning the participants of the survey by legal profession shows that independent lawyers have strong interest in the topic of pro bono, even though they are not part of any formal pro bono scheme or subject to any relevant internal policy of an employer.



4.2. HOW HUNGARIAN LAWYERS RELATE TO PRO BONO?

The survey offered few multiple-choice options to the lawyers to describe their relationship with pro bono along with open space under the ‘other’ section. Before analyzing the numbers, it has to be mentioned that the replies revealed that the lawyers are likely to decide to help if they see that the client is defenceless, in need or in a vulnerable or severely unjust

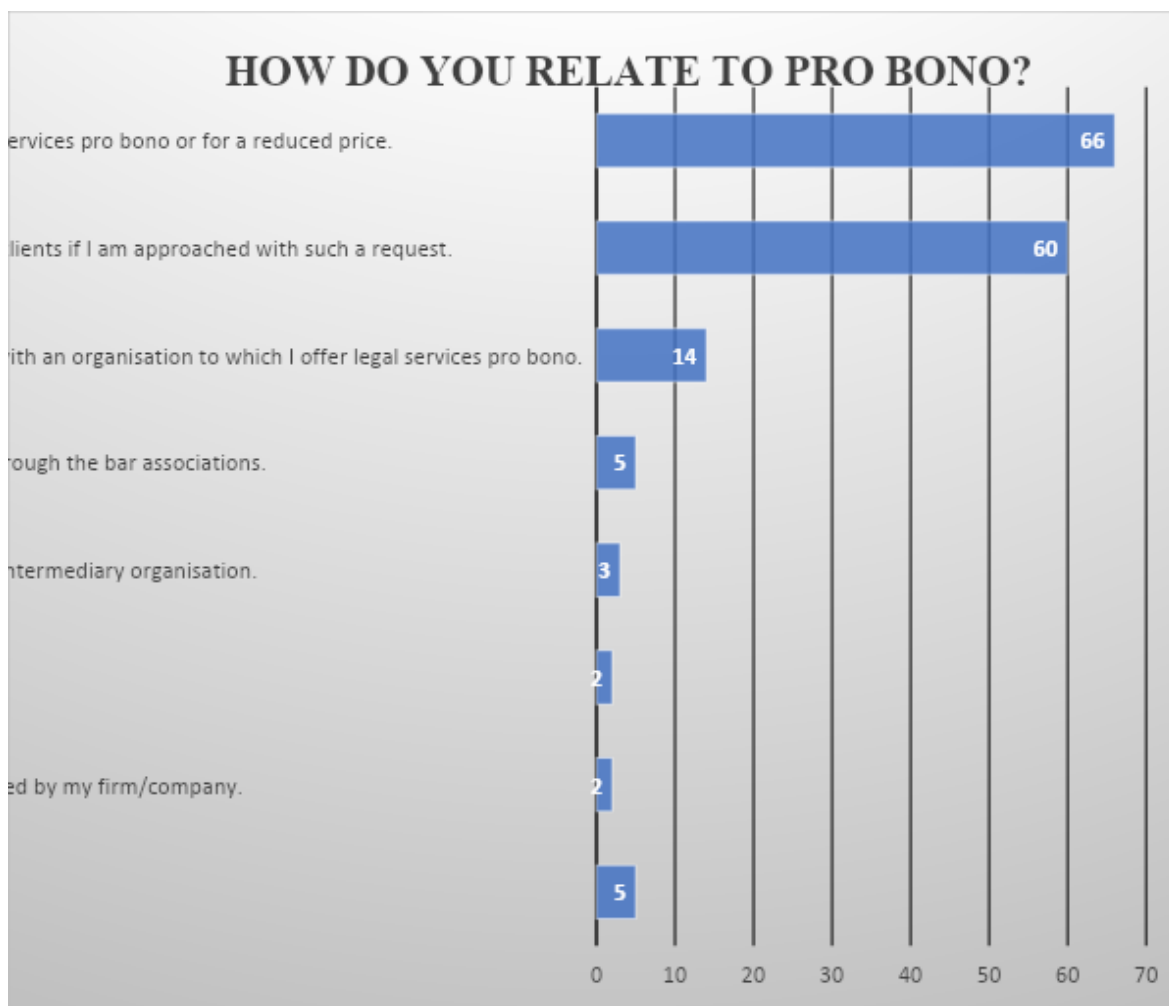
²¹ Zsuzsanna Rutai: Review of practices and gaps in the legal aid system for children in Hungary, PILnet Foundation, 2022, pp. 10.

²² Act LXXVIII of 2017 on Legal Practice, 57 § - 59 §, 66 §.

situation. It can also happen that they give free legal advice for friends and acquaintances. Furthermore, some respondents shared that recent events made them commit to pro bono, for example, the lawyer who joined the bar association's hotline to reply legal questions related to the coronavirus pandemic, or another lawyer who took part in providing legal advice to people fleeing the war in Ukraine. While this demonstrates the importance of one's empathy and social sensitivity in their dedication to pro bono, the organized opportunities can attract lawyers who have never done pro bono legal work before.

The replies show that 97% of the respondents (104 lawyers) already heard about the concept of pro bono, while 95% of them (102 lawyers) reported to provide legal services on a pro bono basis (regularly or on ad hoc basis). Majority of the lawyers take on pro bono cases in two ways: they offer their own clients not to pay for the legal service or only pay a reduced price (61,7%), or they agree to pro bono if they are approached with such a request (56%). Then, 13 % of the respondents reported to have a long-term, established relationship with an organisation to whom they provide legal services pro bono. As an example, a lawyer practicing in South-Hungary has been offering legal services to associations and foundations registered in small villages in the field of culture, cultural heritage (such as libraries and museums), and education for more than 30 years. 2 respondents mentioned that they take pro bono clients from those recommended by their own firm or company which seems to be still low considering that 28% of the respondents were not independent lawyers. This finding gives the impression that even employed lawyers and legal counsels get pro bono clients outside of the course of work.

It is important to mention that among those lawyers who took part in this survey only few of them take steps to look for pro bono clients deliberately. Specifically, 5 lawyers reported to provide pro bono legal advice through bar associations or pro bono days organised by them, 3 lawyers use intermediary organisations, while 2 of the respondents offer pro bono legal services on their own website. By contrast, 5 lawyers responded that they do not take cases pro bono for different reasons. Some of them explained that they cannot afford it financially or find the time – in both cases this means that they cannot give up from time dedicated to paying clients. Few respondents mentioned that they do not know where to find pro bono clients, while others revealed they decided to give up pro bono practice due to bad experience with a client.

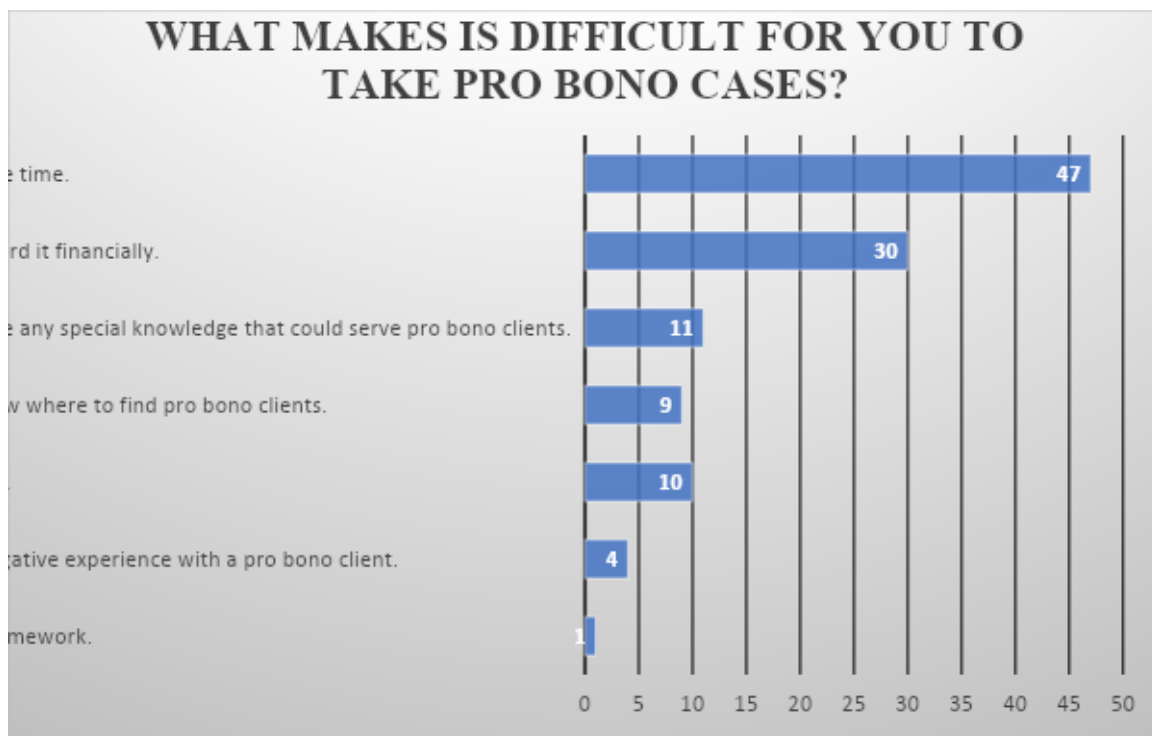


4.3. WHAT MAKES IT DIFFICULT AND WHAT ENCOURAGES HUNGARIAN LAWYERS TO TAKE PRO BONO CASES?

The survey directly inquired about factors which makes it difficult for Hungarian lawyers to take pro bono cases on board. Although 9% of the respondents reported not to face any difficulties, the rest of the lawyers participating in the survey shared several factors that might have a negative effect on their decision to accept pro bono cases. According to the replies, the most pertinent issue is that lawyers do not have time for pro bono practice (44%), or they cannot afford it financially (28%), which is the two sides of the same coin as explained above. This is not the first time to raise this issue: as a lawyer pointed out in an interview for another research on access to justice for children in conflict with law in Hungary, “one has to understand that the lawyer is also a business actor”.²³

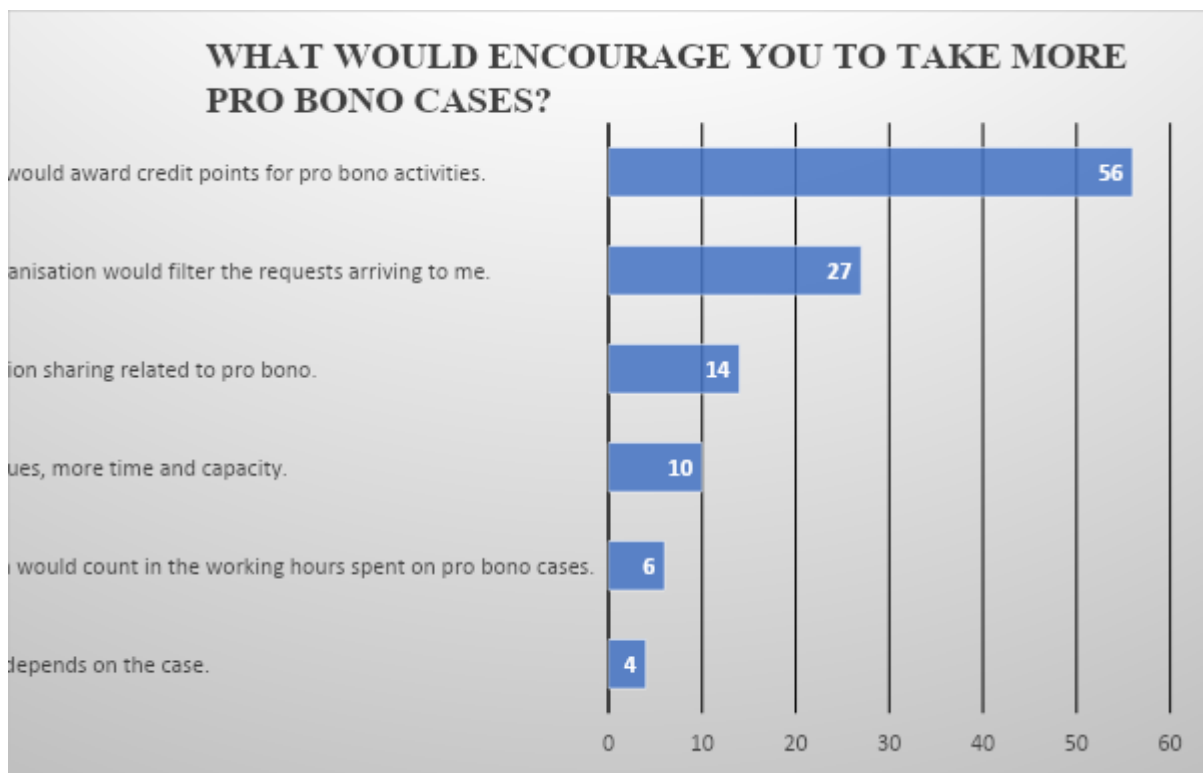
²³ Zsuzsanna Rutai: Review of practices and gaps in the legal aid system for children in Hungary, PILnet Foundation, 2022, pp. 10.

Regarding other negative factors, more than 9 % of the respondents mentioned that they do not have any special knowledge that could serve pro bono clients, for example those who work in the field of company law. While others mentioned that since the legislation related to the status of civil society organisations is quite complex, only experienced lawyers can give pro bono legal advice for civil society organisations. In addition, 8,4% of the respondents claimed that they do not know where to find clients who would need to access legal services on a pro bono basis. Some lawyers shared negative experiences with pro bono clients: they felt like their work was not appreciated or even some clients abused the pro bono offer. The legal framework was mentioned as one of the difficulties as well: legal counsels face limitations if they want to take on pro bono clients.



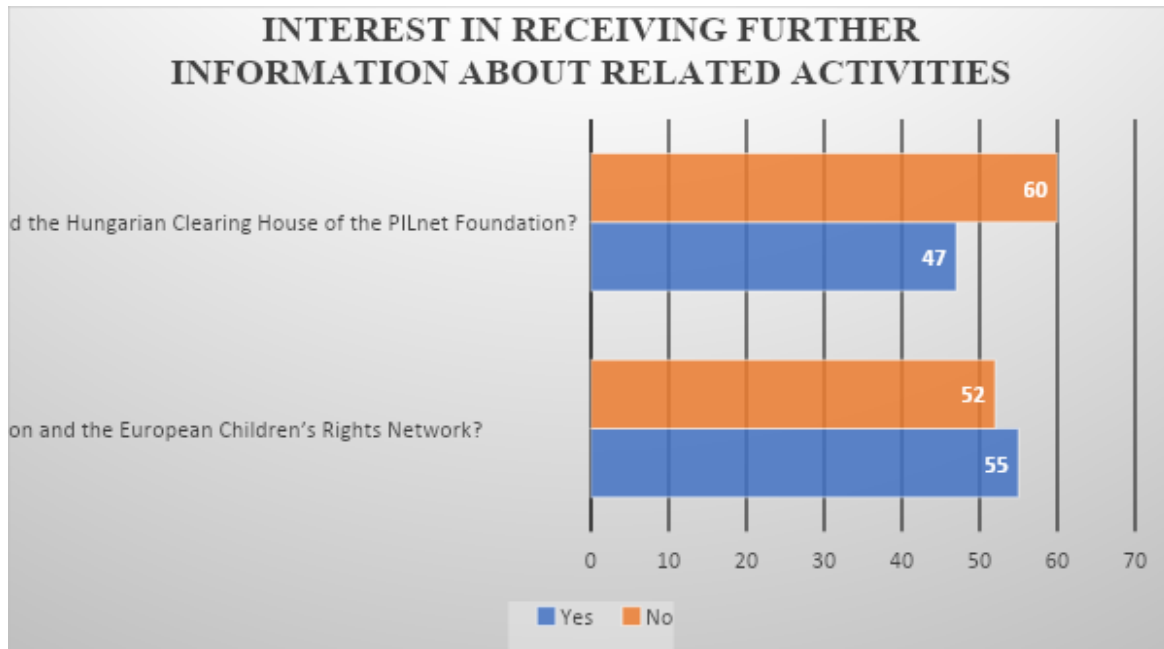
In order to better understand how Hungarian lawyers relate to pro bono, the survey furthermore raised a question regarding the positive factors that might encourage them to take more pro bono cases. According to the majority of the respondents, namely more than 52%, the bar associations could motivate the lawyers if they would award credits for pro bono hours within the professional training framework of lawyers which is a condition to sustain their membership at the bar and their legal practice. Moreover, 5% mentioned that it would be also motivating if their company or firm would count as working hours the time spent on pro bono cases, even in cases when the client was not referred by their employer.

In addition to the incentives described above, 9% of the lawyers responding to the survey would see it as a solution to get practical issues resolved, such as if they would have more time and capacity beside the everyday tasks and paying clients or better tax conditions.. 25 % of the respondents mentioned that it would help if an intermediary organisation would filter the pro bono requests and match the client with a lawyer who has the right profile and the capacity. One of the lawyers explained that if they would take cases on a pro bono basis in their field of specialization that would lead to disproportionate workload, but if there would be an opportunity for cooperation with other lawyers or firms, together they could take one or two bigger cases on board. Nevertheless, 4 respondents made it clear that no factors would encourage them, while according to one of the participating lawyers, pro bono depends on the dedication and social sensitivity of the lawyer and whether they want to give back something to society in such a way.

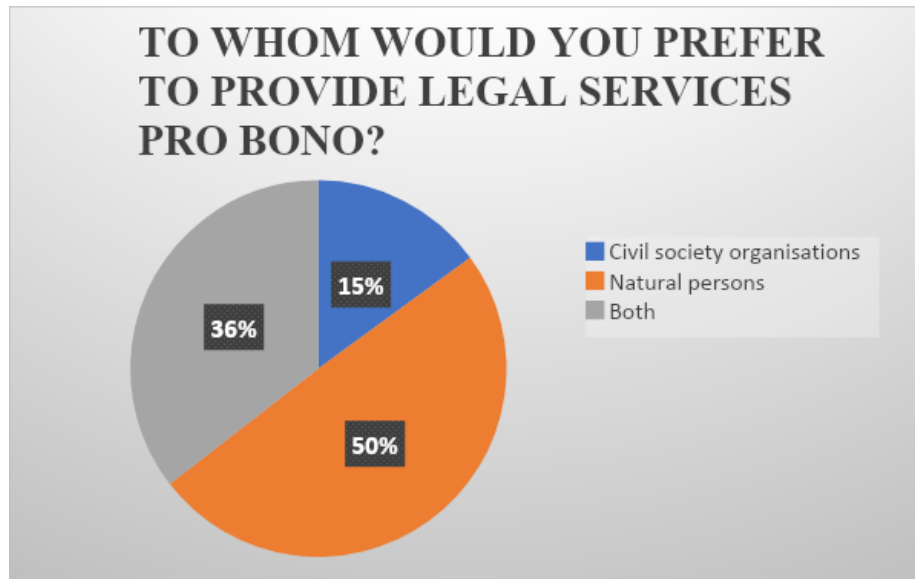


Regarding other positive factors, 13 % of the respondents would find useful to run trainings or share information related to pro bono practice as such, while some raised the question what could be covered by such training and they referred again to their opinion stating that empathy and social sensitivity of the lawyer is the precondition of pro bono. It has to be mentioned that currently there is no training on pro bono in Hungary available which targets

Hungarian lawyers in Hungarian language, but the PILnet Foundation is currently developing a curriculum. Nonetheless, 44% of the lawyers expressed interest to hear more about opportunities related to pro bono in Hungary, while 51,4 % of them would like to receive more information about the children’s rights related activities of the PILnet Foundation.



In addition to positive and negative factors, the survey also looked into the question of the client’s profile as a relevant issue. According to 35% of the respondents, the nature of the client is not important, while the majority would prefer to provide pro bono legal services for natural persons then to civil society organisations. This finding might explain why several respondents reacted positively to the idea of an intermediary organisation filtering and matching pro bono requests: the cases of natural persons might be related to different fields of law, which they do not have experience or expertise of, while civil society organisations usually seek legal advice related to their status (registration and tax issues). Nevertheless, those lawyers who are interested in doing so are ready to establish long-term cooperation with them, as described above in case of 13 % of the respondents.



5. CONCLUSIONS

Considering the lack of the legal framework on pro bono legal practice in Hungary and the emerging trends of collective pro bono projects initiated or supported by bar associations, the survey was launched at an important moment. It has been found that almost all lawyers who took part in the survey knew the concept of pro bono and had direct experience of practicing it. Although based on this finding it is difficult to estimate the prevalence of pro bono since there is a chance that those lawyers took the time to fill out the survey who were already interested in pro bono, the high number of replies definitely demonstrates interest in the topic in the Hungarian context.

The survey results gave the impression, which can be also attributed to the lack of legal framework, that lawyers practice pro bono in a spontaneous way and without intermediary organisations, whereas pro bono clients find lawyers with certain level of empathy and social sensitivity who has the time and capacity to help at them at that moment. This dynamic was confirmed by the fact that only few of the respondents mentioned looking for pro bono clients deliberately. It is worth mentioning that they considered it pro bono if they gave legal advice to friends or acquaintances too. It has been found furthermore that sometimes lawyers give up on pro bono practice following a negative experience if they feel like their work has not been appreciated or the client abused the pro bono offer. Apparently, awareness-raising would be crucial among the clients as well, for example, by developing and distributing a notice on ‘the ethical pro bono client’ that could be freely used by the lawyers.

While inquiring about positive and negative factors influencing pro bono practices, it has been revealed that the reason why most of the lawyers find it difficult to take pro bono clients is due to lack of time and capacity. Considering solutions to this difficulty and the preference expressed to engage with individual clients, several respondents find it a good idea to have an intermediary organization filtering and matching requests with lawyers or law firms. Pro bono projects implemented in teams can be attractive for independent lawyers not only because they can learn from each other, but they can also support each other.

Moreover, if bar associations would award credits for pro bono work within the compulsory professional training framework, it would encourage lawyers to reorganise their schedule and set aside some time for pro bono clients. Similarly, despite the low number of respondents who found training and information sharing useful, pro bono training would probably attract more attention if it would be accredited by the bar associations. The research revealed that the majority of lawyers would prefer to provide pro bono legal services for natural persons than to civil society organisations, which can be attributed to the fact that positive impact is more visible in individual cases and the client might give personal feedback as well. Nevertheless, considering that civil society organizations might represent individuals or group of individuals whose rights had been infringed, awareness-raising among lawyers might concern the social impact of pro bono legal service provided for the benefit of civil society organizations.

ANNEX – THE LAWYER’S SURVEY²⁴

<p>1. Have you heard about pro bono?</p>	<ul style="list-style-type: none"> - Yes. - No.
<p>2. What is your status as a lawyer?</p>	<ul style="list-style-type: none"> - Independent lawyer - Lawyer employed by a firm - Company lawyer
<p>3. How do you relate to pro bono? (Multiple choice possible)</p>	<ul style="list-style-type: none"> - I do not know what pro bono is. - I never take pro bono cases. - Sometimes I offer my client(s) the services pro bono or for a reduced price. - From time to time, I take pro bono clients if I am approached with such a request. - I take pro bono clients through an intermediary organisation. - I take pro bono clients recommended by my firm/company. - I have an established relationship with an organisation to which I offer legal services pro bono. - Other:
<p>4. What makes it difficult for you to take pro bono cases? (Multiple choice possible)</p>	<ul style="list-style-type: none"> - I do not have time. - I cannot afford it financially. - I do not know where to find pro bono clients. - I do not have any special knowledge which could serve pro bono clients. - Other:
<p>5. To whom would you prefer to provide legal services pro bono? (Multiple choice possible)</p>	<ul style="list-style-type: none"> - Natural persons - Civil society organisations

²⁴ The anonymous survey was published on the website of the PILnet Foundation with the deadline of 31 March 2022, available at <https://www.pilnet.org/felmeres-a-pro-bono-helyzeterol/>.

<p>6. What would encourage you to take more pro bono cases? (Multiple choice possible)</p>	<ul style="list-style-type: none"> - Training related to pro bono. - If my company would support pro bono by counting it as working hours. - If an intermediary organisation would filter the requests arriving to me. - If the bar association would award credit points for pro bono activities. - Other:
<p>7. Would you like to receive more information about the opportunities related to pro bono in Hungary and the Hungarian Clearing House of the PILnet Foundation?</p>	<ul style="list-style-type: none"> - Yes. - No.
<p>8. Would you like to receive more information about children's rights related activities of PILnet Foundation and the European Children's Rights Network?</p>	<ul style="list-style-type: none"> - Yes. - No.