



# THE GROWTH OF **PRO BONO IN EUROPE**

USING THE POWER OF LAW FOR THE PUBLIC INTEREST

BY LAMIN KHADAR

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# FOREWORD

PILnet is pleased to introduce this informative report on the development of pro bono in Europe, a field that has expanded greatly in the last ten to fifteen years, with PILnet among others acting as an important catalyst.

PILnet is a thought leader in the field of public interest law. Our theory of change is rooted in the idea of *pro bono publico*—lawyering for the good of the public. We view this not just as a reminder to be charitable, but as an imperative of justice. By treating the public as our client, we make our societies stronger and our laws more just.

From this perspective, PILnet is not just another human rights organization, although we care very much about human rights. It is not just a development organization, although we support sustainable development. And it is not just an advocacy organization, although we are deeply committed to social justice.

Instead, PILnet is an organization focused on law and on how law works in our societies around the world. We believe that law must work for all. But we know that law does not work for anyone on its own. Law is a social process that is mediated through the institutions, processes, and practices that make it function. How law works depends on the factors that influence it; for law to serve the public interest, the public interest needs representation.


With this perspective in mind, PILnet has since its inception worked to build a network of public interest lawyers around the world. Under the leadership and vision of our founder, Ed Rekosh, we have sought to activate, empower, and connect those who use law to represent the public interest. Through our offices in Beijing, Budapest, London, Hong Kong, Moscow, and New York, and with the support of a network of partner law firms, our team has asserted the right of lawyers everywhere to stand up for the public interest.

At the same time, PILnet has worked with partners and lawyers throughout the legal profession and wherever they may practice to engage them in providing pro bono services to those representing important public interest causes. Working in environments where serving the public interest is often seen as someone else's responsibility or the duty of the state, our team of dedicated local and regional leaders has cultivated relationships, convened roundtables, and secured commitments that have helped to nurture a culture of pro bono in more and more societies around the world. Through these efforts, our team continues to remind the legal profession that it is the responsibility of all lawyers to help represent the public interest.

This report, written by Lamin Khadar as a part of his PhD research on public interest lawyering in Europe, reflects his assessment of the development of pro bono in Europe and of PILnet's significant role therein. Through his research, he has identified a number of important debates within the field and among its leading voices about the challenges and choices they face in seeking to harness the full potential of law to serve the public interest in today's world.

In response, and because PILnet is currently reflecting on what its most relevant and strategic role should be going forward, my team and I have prepared a reply, which is included at the end of this report. In it, we briefly reflect on what we see as the barriers and obstacles that limit or impede our ability to help ensure that law works for all and set out some initial thoughts about the way forward.





Through his research the author identified several important personal contributions made by members of our PILnet team and our partners, which we think it appropriate to recognize here.

PILnet extends its gratitude to its staff, past and present, whose efforts were crucial to its work to develop a pro bono culture in Europe and beyond over the last 15 years.

In Budapest (and elsewhere):

Ed Rekosh and Atanas Politov for leading PILnet's efforts globally and making PILnet's European Pro Bono Forum what it is now. Marieanne McKeown for leadership in running the Global Pro Bono Clearinghouse and organizing the European Forums. Krisztina Molnar for providing finance and organizational support for the Forums and the organization as a whole. Tamas Barabas for designing and running the Hungarian Pro Bono Clearinghouse; Reka Varkonyi and Gyöngyvér Papp for providing organizational and logistical support for the Hungarian Pro Bono Clearinghouse and the European Forums. Lorna Kralik for playing a vital role in communications, running the Global Pro Bono Clearinghouse, and organizing the European Pro Bono Forums. Christine Schmidt for her support in communications for Pro Bono Forums and pro bono work in general.

In Moscow:

Dmitry Shabelnikov for leadership in devising and running, until now, PILnet's pro bono programming in Russia and organizing the first Russia Pro Bono Forum. Alexander Lapidus for launching and running, in the early years, the Russian Pro Bono Clearinghouse. Marianna Kosharovskiy, Elena Segalova, Zoya Kaitova, and Sergey Kurakov for coordinating the Russian Pro Bono Clearinghouse.

Michael Cheroutes and Gene Sullivan, two volunteer consultants who helped PILnet to launch its first two clearinghouses in Budapest and Moscow respectively.

In New York:

Devon Kearney and Tanin Tehrani for their invaluable fundraising efforts to make PILnet's pro bono work sustainable. Nina Kalandadze for reforming online support for the European, Asia, and Russia Pro Bono Forums. Habib Nassar and Maysa Zorob for their efforts to develop pro bono in the Middle East and North Africa.

In Asia:

Rob Precht, Seth Gurgel, and Zhang Jingjing (Beijing) for developing pro bono in mainland China and elsewhere in Asia. Tze-wei Ng and Julie Cheng (Hong Kong) for pioneering and running the Hong Kong Pro Bono Clearinghouse, promoting pro bono in Asia and organizing the Asia Pro Bono Forums.

Finally, we would like to thank all the members of PILnet's Pro Bono Council and its Leadership Committee, all our volunteers, partner law firms and their lawyers, partner NGOs and clearinghouses around the world, institutional donors, and hundreds of other people and organizations in PILnet's "orbit" without whose support the achievements described in this report would not have been possible.

Garth Meintjes  
New York  
2016

The background of the page features a soft-focus image of several dandelions. One dandelion seed head is prominent in the upper right, showing its intricate structure. Other seed heads and stems are visible in the background, creating a layered, ethereal effect. The overall color palette is light and airy, with greens and whites.

# INTRODUCTION

This report has been commissioned to commemorate the 10th anniversary of PILnet's annual European Pro Bono Forum. The report aims to chart the development and progress of pro bono in Europe. The report looks at the past, present, and future of pro bono practice in Europe, paying particular attention to the role that PILnet has played as a key factor in pro bono practice across the continent. In addition, the report seeks to explore some of the "hot topics" and dilemmas within the contemporary European pro bono movement as well as a few future trends.

This report has been prepared by Lamin Khadar, working as an independent researcher and on a pro bono basis. To prepare for this report, during the course of a year, the author has undertaken over 50 interviews with leading figures in the European pro bono movement and carried out a number of surveys of individuals and NGOs. The author also spent time conducting research at the PILnet archives and the Ford Foundation archives in New York. The author is tremendously grateful to the PILnet staff and the DLA Piper Pro Bono Team (for graciously hosting him in New York and London) and to all of the interviewees for their collaboration and collegiality.



# EXECUTIVE SUMMARY

A modern pro bono movement is beginning to emerge in Europe. Although the tradition of pro bono practice stretches as far back as ancient and medieval Europe, modern pro bono practice has been developed anew, especially since the 1990s, by NGOs, foundations, and private lawyers. The emergence of modern pro bono practice in Europe was aided by the growth and internationalization of US and UK law firms committed to the institutionalization of pro bono in all of their offices, which has also coincided with a decline in legal aid in Europe. This report documents the long history of pro bono in Europe, with a special emphasis on developments in the past 10 years, which have witnessed significant activity toward building a culture of and the infrastructure for pro bono practice in Europe. Some of the field's central debates and dilemmas, especially for its future, are captured here as a part of that review.

## PRELUDE TO PRO BONO

For as long as there have been lawyers in Europe, there have been free legal services for the poor. **The tradition of pro bono practice (the free provision of legal services by individual lawyers and the legal profession) has deep roots in Europe**, beginning in ancient and medieval Europe, when legal aid was considered a charitable duty provided through the Church or by private lawyers. In the 18<sup>th</sup> and 19<sup>th</sup> century, the legal professions of Europe embarked on some remarkably ambitious initiatives to tackle the challenge of unmet legal need, and **by the 20<sup>th</sup> century, state-sponsored legal aid systems became the norm in Europe**. From that point on, legal aid was no longer conceived of as the honorable duty of the profession but rather the obligation of the state.


## RE-EMERGENCE OF PRO BONO

However, **since the 1990s, organized pro bono practice has made a return in Europe**. The emergence of mega, multinational firms in the United States and London created the conditions out of which a new, increasingly institutionalized and increasingly globalized model of legal volunteering emerged: large firm—organized pro bono practice. That trend has encountered a number of challenges. For one, the creation of state-sponsored legal aid systems in the 20<sup>th</sup> century had dampened the pro

bono ethos in the European legal profession. In addition, there were few European NGOs present that could connect law firms with individuals and civil society actors in need of free legal services. Also, European NGOs mainly did not embrace legal strategies consistently and were not used to working with lawyers. All of this has made it difficult to build a pro bono culture in Europe.

### Toward a Culture of Pro Bono

**Over the past ten years, a culture of pro bono has begun to take root, thanks to a cadre of NGOs, foundations, and pro bono lawyers.** Among others, PILnet has played a central role in this development. PILnet first launched the Central and Eastern European Pro Bono Initiative in 2005 and then its first clearinghouse in Hungary in 2006 (followed by one in Russia in 2007), which quickly took on human rights, deportation, and anti-discrimination projects. Firms who got involved in early projects included Dechert, DLA Piper, Sidley Austin, Sullivan & Cromwell, and O'Melveny & Myers. PILnet and its partners then launched a series of successful “pro bono roundtables,” which connected lawyers at a local level in Europe to discuss and strategize how to meaningfully institutionalize and deploy pro bono within their own communities. The European Pro Bono Forum was also launched during this period, providing a setting in which the development of local pro bono could be connected



with the international movement; learning and sharing their growing body of expertise. These initiatives created the foundations for, and in many cases kick-started, the establishment of a series of domestic clearinghouses across Europe. In sum, the activity during the past 10 years established significant infrastructure and began to leave the imprint of a culture of pro bono in Europe.

### Current Conditions of Pro Bono in Europe

The European pro bono movement is still in an emergent phase and cannot be said to be fully “institutionalized,” as it is in the United States. Over the past three years, pro bono work has been carried out at a rate of about 14 hours per fee earner on average, which is significantly lower than in the United States, for example. The United Kingdom and Belgium (or more accurately, London and Brussels, as recorded pro bono is still very much a capital city, and international law firm, phenomenon) lead the way in pro bono, where average hours are much higher. Such law firms mainly depend on clearinghouses for their European pro bono practices, and most clearinghouses in Europe exclusively cater to NGO clients (with a few exceptions in Romania, Ireland, and Slovakia). Correspondingly, pro bono clients in Europe are usually NGOs, not individuals. **Certain indicators reveal a degree of institutionalization of pro bono, including some pro bono policies at firms, but pro bono is still not an institutionalized practice at most major continental European law offices.**

### DEBATES AND DILEMMAS

Research for this report revealed a number of debates and dilemmas in the European pro bono landscape. One of the hottest topics is **whether pro bono is best placed at the service of NGO clients or individual clients.** At present, law firm pro bono in Europe is primarily provided for NGO clients, mainly because strong state-sponsored legal aid in Europe historically served individuals. However, there are some compelling reasons why law firms should be doing more for individuals in Europe. For example, in several European countries, state-sponsored legal aid is in decline. Moreover, individual legal assistance can improve lives for the many new migrants in Europe. At the same time, the case for supporting NGOs seeking social change is that they are more likely to effect systemic reforms or broader impacts.

Another debate concerns the question of **whether it is best to take an “access to justice/legal aid”-oriented approach or an “expertise”-oriented approach to pro bono.** Proponents of the former approach believe that commercial lawyers should up-skill in specific areas of law, such as asylum law or welfare law, to supplement depleted frontline service providers of legal aid.

Proponents of the latter argue that commercial lawyers should deploy their deep expertise in fields such as tax, trade, investment, and regulation to promote a more equitable and sustainable use of law globally.


This report also documents a dilemma surrounding legal research, which is one of the most common forms of pro bono work across Europe. Legal research has been useful to NGO clients, but there may be a need to address some **concerns that (1) legal research output is not always reliable; and (2) legal research is often difficult to tie to identifiable social justice impact.**

This report also reveals that many believe **firms’ conflict of interest policies are concerning.** Many firms avoid certain pro bono work because of potential conflicts, particularly where NGOs are engaged in fields of advocacy that encroach upon the terrain of traditional commercial clients, such as environmental justice, consumer protection, or financial and economic justice. Some firms, however, are taking a progressive approach and finding creative ways to get around such conflicts.

Another concern is **NGO skepticism about law firm commitment to pro bono projects.** While many NGOs were satisfied with the pro bono services of firms, many also registered the concern that law firms did not always treat NGO clients with the same degree of commitment as they would fee-paying clients, despite claims that they do. That concern goes to the heart of a major critique of pro bono—that law firms engage in bono work more to benefit themselves than to serve the interests of their pro bono clients.

A promising finding of this report is the **overwhelming consensus around the idea that law firms can and should collaborate more in the context of pro bono.** There is wide support for the idea that law firms should collaborate to tackle systematic challenges such as the decline of state legal aid or the migrant crisis, and there are encouraging signs that law firms are taking steps





**in this direction.** Though it is less developed, there is also promise in the idea that **law firms may engage their support staff in skilled volunteering for the NGO community in Europe** with the support of a host of organizations primed to do this.

## THE FUTURE OF PRO BONO IN EUROPE

**Expanding Pro Bono in Europe.** There are few full-time pro bono lawyers in Europe at present. To develop pro bono in Europe, one approach is to **increase the number of full-time pro bono coordinators, professionalizing the role, as in the United States.** Another approach is to **develop the secondary specialization pro bono model**, a model emerging in London. Yet another possible direction involves **“democratizing” the pro bono role**, allowing each lawyer to define social justice and pro bono practice in their own terms, taking personal responsibility for the identification and selection of clients and projects (presumably within a supportive institutional environment).

### **The Pro Bono Professional–NGO Relationship.**

It was found that NGOs often prefer a direct relationship with a handful of lawyers who know and understand their work. NGOs find it particularly frustrating when pro bono managers or clearinghouse staff appear to be screening or interviewing them, looking for a particular kind of client or project. In sum, **there is some confusion surrounding the exact nature of the role of the pro bono professional, and the expectations of NGOs and firms sometimes differ.**

**Culture Building and Institutionalization.** Many clearinghouses have incorporated into their mission the broader goal of promoting pro bono culture within the legal profession and seeking the institutionalization

**of pro bono.** They have faced many challenges in this respect, from resistance to the idea of volunteerism (with many Europeans believing that it is incumbent on the state to remedy social ills), resistance to the culture of talking about “doing good” (many Europeans believe that charitable work should be done but not talked about publicly), and resistance to the perception that pro bono is an Anglo-American imposition.

**Expanding Outside Capitals.** It is clear that organized pro bono in Europe is still predominantly a practice of large international firms and, consequently, a capital city phenomenon. **There is an awareness of the need to move beyond capitals and a willingness (often already concretely manifesting) to engage small and national firms.**

**The Thought Leadership Role of Clearinghouses and Pro Bono Organizations.** A number of clearinghouses across Europe are beginning to take real initiative by questioning the received wisdom of what purpose clearinghouses should serve and what pro bono means as a form of progressive legal activism. This is likely the real future of the European clearinghouse movement. The international clearinghouses and pro bono organizations such as PILnet, TrustLaw, International Senior Lawyers Project, Pro Bono Institute, A4ID, and the Vance Center are all beginning, in different ways, to **embrace a thought leadership role** in relation to pro bono. With its incoming president, PILnet may play a particular role in getting firms involved in work that might have traditionally been off limits due to perceived “commercial conflicts,” work that has the power to radically alter how law works for those without money and power in society.





# I. PRELUDE TO PRO BONO IN EUROPE

Pro bono practice in Europe (the free provision of legal services by individual lawyers and the legal profession rather than the state) has precursors in much earlier professional legal practices. Beginning as early as in Ancient Greece and Rome, these practices have taken on both ad hoc and institutional forms and, as a whole, represent a long tradition of legal aid in Europe.<sup>1</sup>

## A. AD HOC LEGAL AID IN PRE-MODERN EUROPE

One of the earliest recorded examples of pro bono legal services comes from Ancient Athens, where ideas about inclusive democracy, civic duty, and fairness for the poor informed a kind of system of legal aid. Though it was not a comprehensive system, it was reasonably common for Athenian townships and clubs to provide legal help to individuals unable to afford legal representation.<sup>2</sup> That assistance would typically be provided by elected officials acting on their behalf as *synegoros* who presented their case in court.<sup>3</sup> By contrast, in Republican Rome, the *clientela* system, prevalent throughout the majority of Roman history, more closely resembled a patronage system. The weak and impoverished would attach themselves to men of power who would provide legal help in exchange for various services and political support.<sup>4</sup>

During the Middle Ages, pro bono practice appeared in a form that is more recognizable today. During this period, professional lawyers emerged and began to define themselves as a profession.<sup>5</sup> Initially, Christian men provided free legal services, often referred to as *pro deo* (for God),<sup>6</sup> as pious work in spontaneous acts of charity. Over time this evolved into the Church providing more organized forms of assistance. The first was in the form of the *advocatus pauperum deputatus et stipendiatus*, an official employed by the Church and paid to represent the poor in ecclesiastical courts.<sup>7</sup> This institution spread both to the secular courts of France and to the free communes of Italy.<sup>8</sup> A second practice encouraged by the Church was to instruct magistrates to waive the court fees of the poor and sometimes to appoint a private lawyer to represent them free of charge (acting for God). This practice was documented in France, England, Italy, and Germany.<sup>9</sup>

In the 13<sup>th</sup> century, there was shift in thinking about free legal assistance from a religious duty to a civic or professional duty. For the first time, the legal profession


in Europe began to undertake organized, rather than sporadic, pro bono practice. In Modena, for example, this responsibility shifted from the clergy to the city's legal guild.<sup>10</sup> Pro bono practice was conceived then, as it often is now, as a charitable duty and perhaps even as a mark of chivalry or honor of the legal profession.<sup>11</sup> In the words of one commentator, "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."<sup>12</sup> For centuries, providing legal assistance to the needy and impoverished remained an "honorable duty of the European legal profession."<sup>13</sup>

## B. PRO BONO PRACTICE TAKES ROOT IN EUROPE

During the 19<sup>th</sup> and early 20<sup>th</sup> century, organized pro bono practice began to take root across much of Europe, thanks to private lawyers who collaborated with universities, local municipalities, civil society organizations, trade unions, political parties, and the Church to address the problem of unmet legal need, sometimes in remarkably ambitious initiatives.

For example, in 1885, the Danish Bar Association established the *Retshjaelp* in Copenhagen, which provided legal services to the poor by volunteer private lawyers and student clerks.<sup>14</sup> With a small budget and just one paid staff member, it received about 15,000 applications a year and processed 5,000 of these. The *Retshjaelp* was eventually taken over by the Society of Students, based at the University of Copenhagen, and by 1927, similar organizations had been established in several provincial towns across Denmark.<sup>15</sup>

In 1900, in Scotland, a private lawyer founded the "Legal Dispensary" at the law school of Edinburgh, providing free legal advice to anyone with an income of no more than £12 per month (approximately £700 per month at 2005 rates) and aimed to avoid litigation by resolving disputes early.<sup>16</sup> The Dispensary handled around 1,500 consultations per year by 1915 and nearly 4,000 by 1939.<sup>17</sup> Interestingly, the Dispensary was staffed largely by women, with student volunteers passing through and around 30 qualified lawyers supervising. Although they were able to study law and obtain law degrees, women were not yet permitted to practice.<sup>18</sup> The Dispensary recognized the value of these educated and skilled



women and actively recruited them to join its ranks.<sup>19</sup> A similar organization was established at the University of Glasgow.<sup>20</sup>

Another similar institution was the municipal legal aid bureau. Documented in Poland, Germany, Switzerland, the Netherlands, Finland, Estonia, Norway, and Sweden, this municipal institution involved the private legal profession to maintain legal aid offices that provided free legal advice to the poor.<sup>21</sup> In Gothenburg, Sweden, the so-called “Poor Man’s Advocate” system was established in 1872.<sup>22</sup> Each municipality appointed a private lawyer, on a part-time basis, and within a few decades, nearly every major Swedish city had adopted the system.<sup>23</sup> The Swedish offices were ultimately taken over by the Swedish state in 1919 to become state-sponsored legal aid bureaus.<sup>24</sup>

Meanwhile, in Danzig (modern-day Gdańsk, Poland), a “Legal Information Bureau” was established by the municipal authorities in 1908. The Bureau provided free legal advice and assistance in preparing legal documents to poor people in the municipality. The Bureau was run by both official and unofficial staff (most likely legal volunteers or perhaps students).<sup>25</sup> The municipality of Warsaw also established a “legal consultation” bureau in 1915, and the Polish Minister of Interior even issued a circular in 1919 requesting all municipal councils to set aside funds in their budgets to establish their own legal consultation bureau, each to be staffed by a private lawyer under contract with the bureau.<sup>26</sup>

In Germany, before the turn of the century, trade unions set up legal aid bureaus for workers to provide advice on accident insurance and social welfare law. Churches followed suit, setting up their own legal aid bureaus, and a statistical report from 1912 recorded some 916 legal advice bureaus of which around half were maintained by trade unions, 145 by church organizations, 119 by local municipalities, and 93 by women’s legal aid organizations.<sup>27</sup> Collectively, they provided advice to 1.8 million citizens.<sup>28</sup> Similarly by 1926 in Austria, there were nearly 90 unions providing free, though limited, legal advice to their members across the country, of which around 20 were Christian unions.<sup>29</sup> Similar practices by trade unions were documented in Czechoslovakia, Danzig and greater Poland, and Hungary, where either trade unions, churches, and even one tenant association in Latvia, provided legal aid.<sup>30</sup> It is likely that such organizations were pervasive across much of Europe.

One final, notable example comes from Romania, where in 1927, the national bar association required each of its local branches to run a free legal assistance bureau staffed with salaried lawyers and volunteer private lawyers.<sup>31</sup> Where a private lawyer was requested to act on a pro bono basis for a client by the bureau, compliance was compulsory (including for assistance with litigation). Meetings among bureau staff and volunteers were to be held daily at least twice a week. Persons winning monetary sums as a consequence of litigation engaged in by the bureau would be required to compensate the bureau after the fact. Senior lawyers were to be assigned to legal aid matters that were of particular importance and, most remarkable, a sum was to be set aside by the national bar and distributed as a form of bonus to private lawyers “who distinguish[ed] themselves in legal-aid work.”<sup>32</sup> Somewhat similarly, in France the national bar established its own network of legal aid bureaus in Paris and the provinces.<sup>33</sup> Similar arrangements were also in place in Latvia, Poland, and Hungary.<sup>34</sup>

### C. TOWARD STATE-SPONSORED LEGAL AID

In both Eastern and Western Europe in the early 20<sup>th</sup> century, legal aid and access to justice came to be viewed as a political or social right that should be guaranteed by the state. As a result, the idea that legal aid was a charitable duty of the profession receded. Legal aid was becoming a professional practice area for certain specialized lawyers who, as part of the state-sponsored system, would be remunerated for their work. Some of the first European countries to move in this direction were Sweden and Germany. As early as 1919, the Swedish government “nationalized” the municipal Poor Man’s Advocate offices that had been set up independently by private lawyers and municipal authorities 50 years earlier.<sup>35</sup> Now the state would finance poor persons’ litigation fees and subsidize a national network of legal aid bureaus.<sup>36</sup> Meanwhile, in Germany, a 1923 law ‘allowed German lawyers acting for the poor to recover their full fees from the state (although the amount was subsequently capped, and then reduced).<sup>37</sup> Lawyers were to be appointed at the discretion of the court and, once appointed, obliged to take instructions and permitted to claim their fees and disbursements from the state up to the capped amount.<sup>38</sup>



## D. THE STATE-SPONSORED SYSTEM IN WESTERN EUROPE

During the post-war period, a larger number of European countries began experimenting with state-subsidized legal aid systems. In Britain, the Legal Aid and Advice Act was passed in 1949. In contrast to the German and Swedish systems, qualifying legal aid candidates in this system were able to select their own lawyer from a range of private practitioners, allowing for competition between lawyers for legal aid cases.<sup>39</sup> The selected lawyers would then be compensated by the state. The Netherlands followed a similar path in 1957, when it passed legislation to establish a state subsidy for legal aid provided to persons of low income.<sup>40</sup> In France, a new law was introduced in 1972 replacing the charitable system, which relied on the pro bono services of private lawyers and had been in place since 1851.<sup>41</sup> The French law was largely modeled after the British 1949 law but would only subsidize lawyers for their expenses, rather than reimbursing their fees.<sup>42</sup> There were similar developments in Austria and the Republic of Ireland, and by the end of the 1970s, a consensus had emerged in Western Europe that the state had a role to play in sponsoring systems of legal aid for the poor.

## E. THE RISE AND FALL OF THE SOVIET SYSTEM

A different path was taken in Central and Eastern Europe. Between the 1940s and the 1980s, during varying periods of socialist rule across the region, law came to be understood as a tool for achieving socialist policy and so lawyers were viewed as public servants carrying out their duties for the benefit of the public at large. It has been suggested that on the one hand that “there [was] no comprehensive Soviet program of legal aid,” and on the other hand, “the entire Soviet legal system constitute[d] a system of legal aid.”<sup>43</sup> Soviet law did not create a specific or separate legal aid system, because legal assistance was remarkably affordable to begin with, and any person requiring legal services could go to the office of a “lawyers’ collective” where fees, as insignificant as they were, could be forgiven.<sup>44</sup> Also, the litigation process was considerably simplified, such that in many cases applicants would be able to represent themselves, with the major workload falling to the inquisitorial judge rather than the lawyers.

The collapse of the Soviet Union brought about a crisis in the legal profession and legal aid in the former Communist states. New Western-style constitutions codified the right of equal access to justice and the right to legal representation in judicial and administrative proceedings,<sup>45</sup> but beyond certain situations in the context of criminal defense and some civil cases, there were no positive obligations placed on the state to fund or institutionalize legal aid. The national bar organizations were left with the challenge of unmet legal need. However, they were in a weakened condition, because the state had long provided social services.<sup>46</sup> Moreover, because governments were strapped, resources were scarce, the population was poor, and legal services were not a priority,<sup>47</sup> private lawyers were increasingly attracted by lucrative opportunities in corporate and commercial law that came with the embrace of market economies, privatization, and the influx of foreign firms.<sup>48</sup> Few private lawyers therefore undertook pro bono or public service work and often derived little satisfaction from such work, particularly where there was a mandatory requirement.<sup>49</sup> Often, pro bono work was reserved (sometimes explicitly, as in Romania) for younger and more inexperienced lawyers.<sup>50</sup> All of this created organized pro bono systems that produced very low standards of service provision for poor clients.<sup>51</sup>

However, challenges to this status quo and reform efforts across the region, pushing for the introduction of government-subsidized legal aid systems, modeled on the Western systems, commenced at the end of the 1990s and during the early 2000s. Thanks in part to significant investment by the Ford Foundation, the Open Society Foundations, and the work of organizations like PILnet, INTERIGHTS, and the Bulgarian and Polish Helsinki Foundations, legislation establishing state-sponsored civil legal aid systems was passed in quick succession in Hungary (2003), Slovakia (2005), Lithuania (2005), Latvia (2006), Bulgaria (2006), Georgia (2007), Moldova (2007), Russia and Ukraine (2011).<sup>52</sup> Consequently, by the beginning of the 2010’s, state-subsidized and sometimes even state-organized legal aid systems had been established across much of Central and Eastern Europe, mirroring the systems in place across Western Europe.





## II. RE-EMERGENCE OF PRO BONO

During the 20<sup>th</sup> century, a principle had emerged in Western Europe that the state was obliged to “affirmatively and effectively guarantee the right of *all* to competent legal assistance,”<sup>53</sup> and by the beginning of the 21<sup>st</sup> century, most European countries had taken steps to realize this principle by providing some variant of what has been called the “judicare” model of legal aid.<sup>54</sup> As a result of that process, legal aid became the responsibility of specialized lawyers paid by the state, while private lawyers in Europe no longer considered charitable legal aid their professional duty.

Nonetheless, there were some exceptions to this rule. For example, in Poland and Belgium, truly organized state-subsidized systems of legal aid have never fully materialized, and the legal aid system remains largely dependent on the goodwill and administration of the national and local bars and the courts.<sup>55</sup> Beyond these outliers, there were also counter trends. For example, there are records of other models of pro bono or “low bono” practice—outside of the state—taking off in the late 1960s and early 1970s across the continent. These include the student led “law shop” (*rechtswinkel/wetwinkel/boutique de droit*) movements in the Netherlands and Belgium and the “law bus” (*juss bus*) movement in Norway—all of which involved lawyers and law students in providing free legal assistance to the needy.<sup>56</sup> Or, there was the “law centre movement” in the United Kingdom,<sup>57</sup> which saw an estimated 3,300 lawyers collaborating with community workers to provide heavily discounted legal assistance to persons who were not otherwise being serviced by the profession.<sup>58</sup>

But it was not until the 1990s that pro bono legal practice in Europe, fully independent of the state, seriously re-emerged.<sup>59</sup> Several factors contributed to this trend. The first was the decline of state-sponsored legal aid in this period. Throughout the 1990s and 2000s, several state-funded legal aid schemes across Europe entered a period of decline when states began to reduce budgets for legal aid systems and tighten eligibility criteria that restricted access to those legal services available.<sup>60</sup> This happened not only in the Netherlands, Sweden, and England (the European countries that have historically had the highest legal aid budgets per capita)<sup>61</sup> but also, and often as a result of austerity, in Belgium, Greece, Ireland, Cyprus, and even Germany. In addition, in many jurisdictions, including Spain, Portugal, and Italy, the cost

of justice for individuals increased with the introduction of VAT on lawyers’ fees and/or the raising of court costs.<sup>62</sup>

Though budget cuts and austerity measures are often cited as the main reason for the emergence of organized pro bono in Europe at the end of the 20<sup>th</sup> century, the picture is more complicated. First, most of those measures post-date the emergence of organized pro bono practice in continental Europe. Second, organized pro bono practice in Europe is overwhelmingly (over 80% on average)<sup>63</sup> targeted at NGOs, which do not typically qualify for legal aid anyway; and indeed, that targeting has been intentional so as to not infringe on the mandate of extant state-sponsored legal aid schemes across Europe. Third, it is not clear that the decline in legal aid has affected all parts of Europe equally, particularly in Central and Eastern Europe, where legal aid budgets were significantly lower to begin with. Ultimately, declining legal aid budgets, although a contributing factor in some jurisdictions, has not been the central reason for the re-birth (or more accurately, re-imagination) of organized professional pro bono practice in Europe.

### A. THE INSTITUTIONALIZATION OF PRO BONO IN THE UNITED STATES AND LONDON

One central factor in the re-emergence of pro bono in Europe has been the institutionalization of pro bono practice in many large US and UK (London-based) law firms.

In the United States, pro bono work has historically been characterized by acts of charity provided sporadically by individual lawyers.<sup>64</sup> Arguably, widespread organized pro bono practice did not emerge until the 1960s<sup>65</sup> as a result of the US “public interest law movement.”<sup>66</sup> That movement inspired law students across the country to take up public interest law. So-called public interest law firms<sup>67</sup> began to attract the best students, thus reducing the talent pool available to large commercial law firms.<sup>68</sup> Commercial law firms recognized this trend<sup>69</sup> and responded by establishing pro bono programs (replete with managers, committees, and policies) to attract top law graduates. By 1973, at least 24 large US law firms had formalized pro bono programs,<sup>70</sup> and some, such as Hogan & Hartson, had even established entire public



interest law departments with several full-time staff dedicated to pro bono work.<sup>71</sup> The 1960s and 1970s, with their spirit of civic action, were seen as a pinnacle for US pro bono.

However, the 1980s to early 1990s saw pro bono decline as firms engaged in rapid economic expansion and growth.<sup>72</sup> Nonetheless, it was during this period, in 1983, that the American Bar Association adopted a pro bono rule applicable to all US lawyers, which stipulated that: “a lawyer should render public interest legal service by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations.”<sup>73</sup> In 1993, this rule was revised to include an aspirational target that every US lawyer should provide at least 50 hours of pro bono per year.<sup>74</sup> In the meantime, the US federal government was cutting funding for legal aid and encouraging organized civil society and citizen volunteerism to pick up the slack.<sup>75</sup> With renewed interest in the legacy of the 1960s public interest law and civil rights movements, law graduates demonstrated a particular interest in social justice. In response, large US law firms who were in

need of increased numbers of recruits to support their growing business needs established pro bono programs to lure top graduates.<sup>76</sup> Meanwhile, purpose-built civil society organizations (e.g., the Pro Bono Institute established in 1996) grew naturally out of this context to serve the firms by connecting them and their young lawyers with NGOs and individuals in need of free legal services.<sup>77</sup> Finally, the legal press (*The American Lawyer* in particular) began to monitor and report on pro bono practice at the top 200 law firms.<sup>78</sup> The use of pro bono ranking tables (measuring law firm and lawyer commitment) both legitimized the efforts of internal advocates pushing for an expansion of pro bono efforts within their respective firms and encouraged firms to adopt more ambitious pro bono programs and set higher pro bono targets.<sup>79</sup>

This combination of trends had effectively transformed US pro bono into a highly organized and sophisticated practice with most top law firms featuring in-house pro bono management structures by the early 2000s. The tables below chart the growth of pro bono practice among the top 100 US law firms from the 1990s up to 2008.

#### Chart I<sup>80</sup>

**Average Hours of Pro Bono Per Lawyer: Top 100 US Firms**

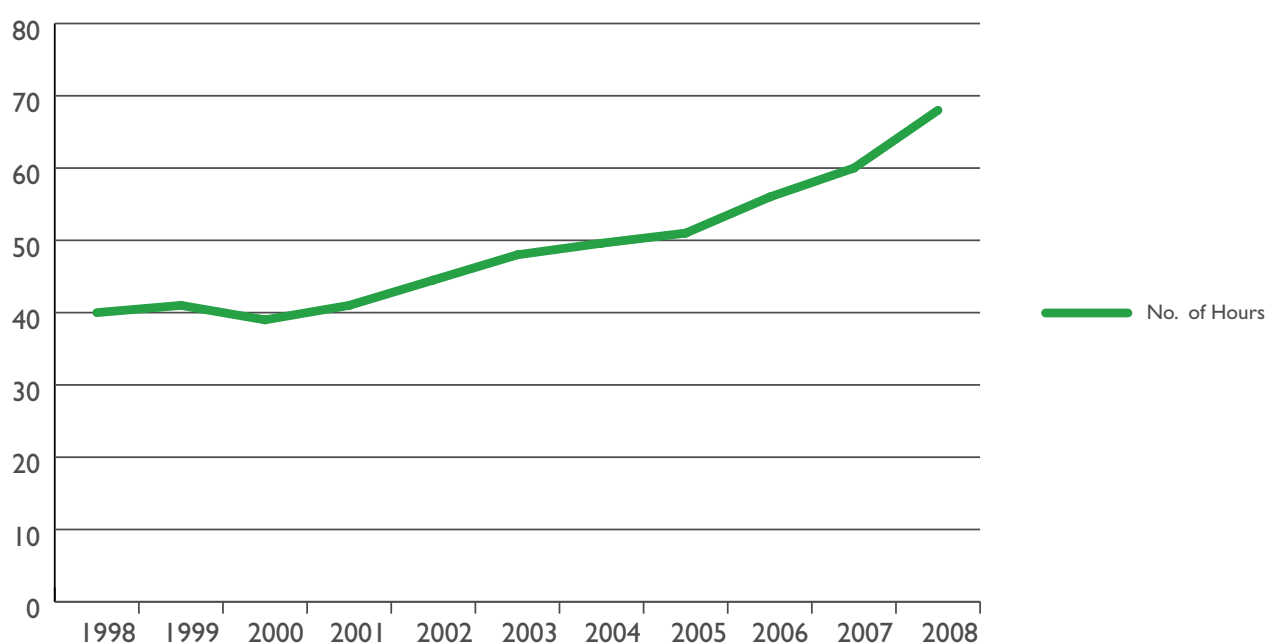
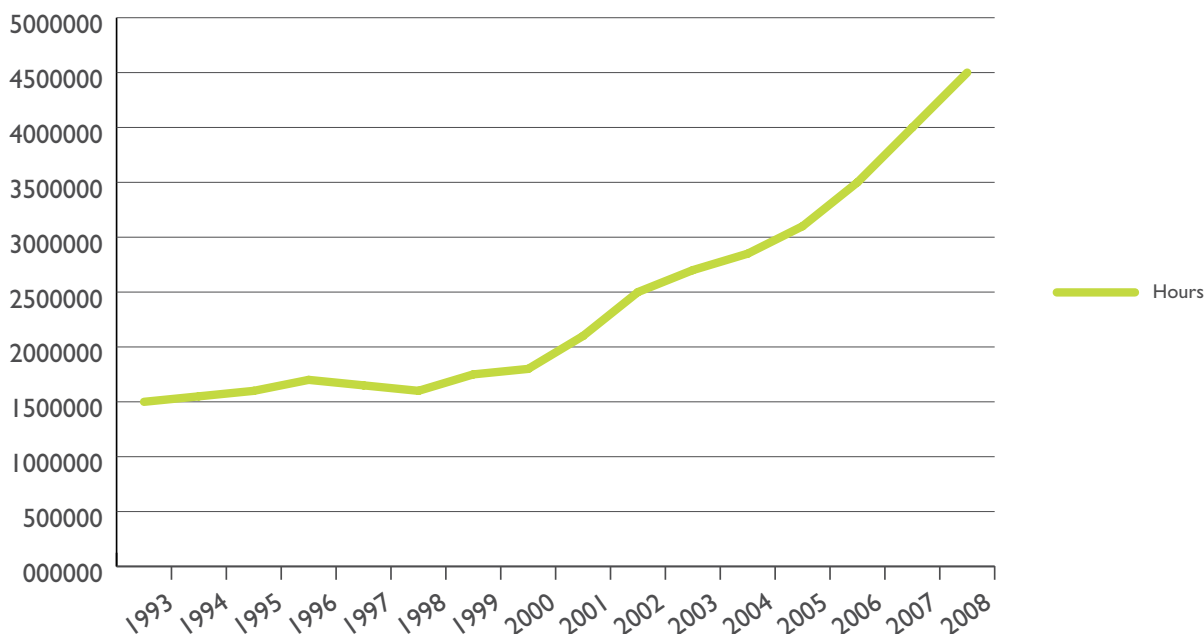


Chart 2<sup>81</sup>

**Total Pro Bono Hours: Top 200 US Firms**



The institutionalization of pro bono in the United Kingdom was more gradual. By the 1980s, the spirit of social justice that had underpinned the UK's law centre movement had dried up within the profession. The legal profession, especially the largest firms, were reluctant to embrace the pro bono ethos throughout the 1980s, in part because of the zeitgeist of the United Kingdom under Thatcherism and also in part because of the existence of the state-sponsored legal aid system.

Yet criticism of the profession's neglect of public service began to mount,<sup>82</sup> and several serious efforts were made at establishing pro bono infrastructure. In 1992, the Law Society established a Pro Bono Working Party and held a conference on pro bono in 1993, but the conference revealed a lack of appetite within the profession to engage in pro bono and a shared belief that the profession could better invest in lobbying the government for more legal aid.<sup>83</sup> Then there was an attempt to introduce a rule equivalent to the ABA pro bono rule in the United States but that failed, as did a proposal to have large firms contribute interest on client accounts to a pro bono fund.<sup>84</sup> In 1996, the Labour Party threatened legislation to force mandatory pro bono.<sup>85</sup> However, this never transpired and by 1998, a survey

into the pro bono practice of the top 120 British firms concluded that, "the vast majority of firms are at best apathetic, at worst dismissive."<sup>86</sup>

Nevertheless, some small progress was made between 1996 and 2000. It began with the founding in 1996 of the Solicitors Pro Bono Group (SPBG, now "Law Works") by Andrew Phillips.<sup>87</sup> SPBG was established to unite and centralize the pro bono efforts of lawyers across England and Wales. Its membership grew rapidly and by 2000, it included 130 firms and 40% of the top fifty firms.<sup>88</sup> Some top British law firms began to appoint full-time pro bono managers and directors and implement pro bono policies, and by 1999 there were six firms that maintained full-time pro bono personnel.<sup>89</sup> It has been suggested that the cause of this progress was two-fold. First, the corporate volunteering ethos, which was booming in the United States, found its way to the United Kingdom. A second and related development was that corporate clients of large law firms began to embrace the pro bono spirit; in 1999 British Aerospace adopted a policy requiring law firms to undertake pro bono work or face being dropped from their panel of legal advisors.<sup>90</sup> The evidence suggests that various other corporate clients began to follow suit.<sup>91</sup>

The progress achieved in the late 1990s and early 2000s led to the gradual institutionalization of pro bono practice in large commercial law firms in England. By 2012, 45% of lawyers at firms with over 81 partners were engaging in pro bono practice.<sup>92</sup> In firms with 26 or more partners, 57% of lawyers in were engaged in pro bono work in 2007 (although it dropped again to 41% in 2012) . Even in 2009, in the midst of the financial crisis, large city firms like Linklaters and Clifford Chance were reporting growing rates of pro bono.<sup>93</sup>

To sum up, by the late 2000s, pro bono practice had been significantly institutionalized in the top 100 American firms and certainly in the top 10 or so English firms.<sup>94</sup>

## B. THE MEGA LAW FIRM AND THE GLOBAL LAW FIRM

Another factor contributing to the re-emergence of profession-led organized pro bono practice in Europe in the last two decades or so is the fact that between 1950 and 2000, US and UK firms have experienced tremendous growth and international expansion. In the United States, the 50 largest firms in 1950 had an average of only 49 lawyers.<sup>95</sup> By 2001, the average size of the *American Lawyer* top 100 firms was 621 lawyers.<sup>96</sup> Meanwhile, in the United Kingdom, until 1967 a law limited law firms to having no more than 20 partners.<sup>97</sup> Once the restriction was removed, they expanded relatively quickly, and by 1997, there was an average of nearly 200 lawyers among the top 20 firms, a number much smaller than those at the top US firms. Still, the largest UK firms rivaled the US firms in size. For example, Clifford Chance, had 708 lawyers in 1997.<sup>98</sup>

The late 1980s into the early 2000s also saw major international expansion among large US and UK law firms. Across seven firms shown in Table I, there has been an average of over 400% increase in the number of foreign offices between 1987 and 2002.

**Table I. Number of Staff and Foreign Offices of Large Law Firms<sup>99</sup>**

Firm	Number of Staff			Number of Foreign Offices		
	1987	2002	% change	1987	2002	% change
Baker & MacKenzie	1,070	3,762	<b>+252</b>	30	68	<b>+127</b>
Clifford Chance	803	3,180	<b>+296</b>	12	33	<b>+175</b>
Jones Day	933	1,735	<b>+86</b>	5	29	<b>+480</b>
Shearman & Sterling	517	1,027	<b>+99</b>	4	18	<b>+350</b>
Freshfields	351	1,604	<b>+357</b>	4	28	<b>+600</b>
Sidley & Austin	689	1,278	<b>+85</b>	3	8	<b>+167</b>
Skadden & Arps	852	1,680	<b>+97</b>	2	22	<b>+1,000</b>

Much of the internationalization of the law firms occurred in Europe. Of the top twenty cities where large law firms maintained offices, twelve were in Europe.



**Table 2. Locations of Large Law Firms’ International Offices<sup>100</sup>**

Rank	City
#1	London
#3	Frankfurt
#6	Brussels
#7	Paris
#10	Moscow
#11	Amsterdam
#12	Berlin
#13	Budapest
#14	Prague
#17	Munich
#18	Dusseldorf
#20	Milan

By the early 2000s, therefore, US and UK law firms had a significant European footprint that was prime for the development of a pro bono movement.





# III. TOWARD A CULTURE OF PRO BONO IN EUROPE

As US and UK law firms expanded globally, they sought to take their newly institutionalized pro bono practices with them. In the words of Suzie Turner, partner and chair of Dechert's firm-wide pro bono practice, in 2012, "Our commitment to pro bono is global in nature . . . one firm, one commitment, one policy."<sup>101</sup> In 2015, she put it another way: "There is legal need in all jurisdictions, so to require pro bono in the US but not in Kazakhstan does not hold water."<sup>102</sup> As the US firms began to encourage lawyers in their foreign offices to uphold the pro bono commitments established in the United States, British firms joined in that trend.


Yet the European legal community resisted the development of a pro bono culture, mainly because of established state-sponsored legal aid systems. There was opposition to pro bono from the European bars, there were legal and regulatory barriers, and there was little "pro bono infrastructure." That was markedly different from the United States, where civil society organizations operated as "feeder organizations" and/or "clearinghouses," connecting law firms with individuals and civil society actors in need of free legal services.<sup>103</sup> There was, according to Turner, "[an] absence of infrastructure and an absence of NGO culture that was looking for and trusting pro bono."<sup>104</sup> In short, there were no "pro bono NGOs."<sup>105</sup> Such NGOs not only operate as clearinghouses, mediating between clients and law firms and feeding pro bono opportunities to the firms, they also advocate for the institutionalization of pro bono by nudging bar associations and the state to promote and support the development of pro bono by changing the regulatory and legal environment. They also broadly promote pro bono culture among lawyers and among civil society, thus building up capacity. Fortunately, this need would soon be responded to by a host of European organizations, with PILnet at the forefront.

## A. THE ROLE OF PILNET

PILnet (originally called the Public Interest Law Initiative in Transitional Societies) was founded in August 1997, in the wake of the collapse of the Soviet system, with seed funding of \$400,000 from the Ford Foundation "to promote public interest law in Russia and Eastern Europe."<sup>106</sup> At the time, there was a great deal of activity and energy within civil society in the region to rebuild

countries using law as an instrument for the common good. In that environment, PILnet founder Ed Rekosh and his staff established PILnet as the central resource and actor for public interest law in the region by providing a supportive framework for progressive developments within legal education, the professional bar, the state, and civil society. During its early years, PILnet promoted and contributed to the establishment of university law clinics (over 70 by 2003);<sup>107</sup> initiated a process of legislative reform in relation to legal aid and access to justice in multiple jurisdictions;<sup>108</sup> and promoted the use of international and regional human rights mechanisms and the use of impact litigation strategies by civil society.

However, by 2001, many of the US funders that had poured into the region (e.g., Ford Foundation, USAID, Mott Foundation, German Marshall Fund, and the American Bar Association) were beginning to pull out. The Ford Foundation, which had provided PILnet with 40% of its funding between 1997 and 2001, had launched an exit strategy and was tying off all of its grants. Civil society organizations, many of which had received extensive support and mentoring through PILnet, were seeing their funding cut and were facing an uncertain long-term future.<sup>109</sup> Accordingly, PILnet sought new ways of channeling resources into the promotion and support of public interest law in Central and Eastern Europe. Rekosh had had personal experience with pro bono work at the New York law firm Coudert Brothers, where in 1988 as an associate, he had worked for organizations like Human Rights Watch, Lawyers Committee for Human Rights and the International League for Human Rights.<sup>110</sup> So when in 2001, Rekosh was invited to a conference in London for the Solicitors Pro Bono Group (SPBG),<sup>111</sup> he attended willingly and with a specific interest in pro bono in the European context. However, he recalls that, sitting on a panel entitled "Pro Bono Across the Channel," virtually no lawyers from continental Europe were in attendance, and so, at the time, Rekosh doubted whether pro bono could be successful in the continental European context.<sup>112</sup> However, soon enough, pro bono began to "look like one part of the answer for long-term sustainability" of PILnet's work to develop public interest law in Europe.<sup>113</sup> In the words of Rekosh, "I was interested in pro bono because I could see some long-term potential to build



a sustainable base [for all of the work that PILnet had done] over the prior 10 years or so, [and] it would add resources to meet the legal needs of civil society.”<sup>114</sup>

PILnet was well situated to play a role in building a pro bono culture because of the connections, capacity, and knowledge it had built in its early years. By the early-to-mid 2000s, PILnet had developed a person-to-person network of hundreds of civil society organizations spanning Central and Eastern Europe. It had worked closely with those organizations providing them skills training and had therefore become intimately acquainted with their outstanding legal needs. PILnet had a good understanding of which social and political issues were the most pressing, which public interest law strategies were likely to be successful, and which organizations and individuals had the greatest appreciation for public interest law. PILnet had also built relationships with the legal bars, law schools, judiciaries, and justice ministries of most Central and Eastern European countries. Most important, the organization had cultivated a catalytic approach to sustainable progressive transformation by building up local champions rather than being the central change-maker itself.

### **I. Introducing Pro Bono Practice in Hungary**

In 2005, PILnet launched the Central and Eastern European Pro Bono Initiative, which sought to “establish pro bono practice on a clear, institutionalized basis in Central Europe.”<sup>115</sup> The initiative focused primarily on Hungary and intended to (1) identify the pro bono needs of NGOs working in Hungary; (2) establish a clearinghouse to connect Hungarian firms and lawyers with NGOs and enable them to do more pro bono work; (3) organize discussions with the Budapest bar; and (4) organize an international conference on pro bono in Budapest.<sup>116</sup>

PILnet had learned from a prior failed Polish experiment with pro bono<sup>117</sup> that, for the initiative to work, they would need support from within the law firms themselves. There were around eight large international law firms with offices in Hungary at the time (including Clifford Chance, White & Case, Linklaters, and Allen & Overy). To engage them, PILnet secured high-level pro bono assistance from Michael Cheroutes, a retiring infrastructure finance lawyer from Hogan & Hartson (now Hogan Lovells), who came to work at PILnet’s

Budapest offices for several months to help it open the door to some of the large international firms in Budapest and more broadly in the region, to help design a governance structure and strategy for the initiative, and to help design and launch a Hungarian clearinghouse. Cheroutes helped PILnet persuade 10 law firms to appoint Budapest-based pro bono coordinators from among their legal staff to constitute a “Pro Bono Coordinator Committee.”<sup>118</sup> PILnet then capitalized on the involvement of law firms to attract resources to fund its activities. By summer 2006, PILnet secured commitments of around \$10,000 from four of the large international firms based in Budapest.<sup>119</sup> (As confidence in PILnet grew over the years, the gross annual donations from law firms would grow to over \$500,000 by 2014.<sup>120</sup>) At the same time, PILnet staff ensured that local actors viewed the project not as an American imposition but as a practice rooted in the heritage of the Hungarian legal profession, as evidenced by research showing charitable lawyering examples in Hungary as far back as the turn of the century.<sup>121</sup>

In 2006, PILnet made another breakthrough when it convinced nine firms to endorse a “Pro Bono Declaration” to commit to the idea that it was an “ethical responsibility to ensure that all members of the Hungarian society are provided with legal services.”<sup>122</sup> PILnet would later use this template across the rest of Europe.<sup>123</sup>

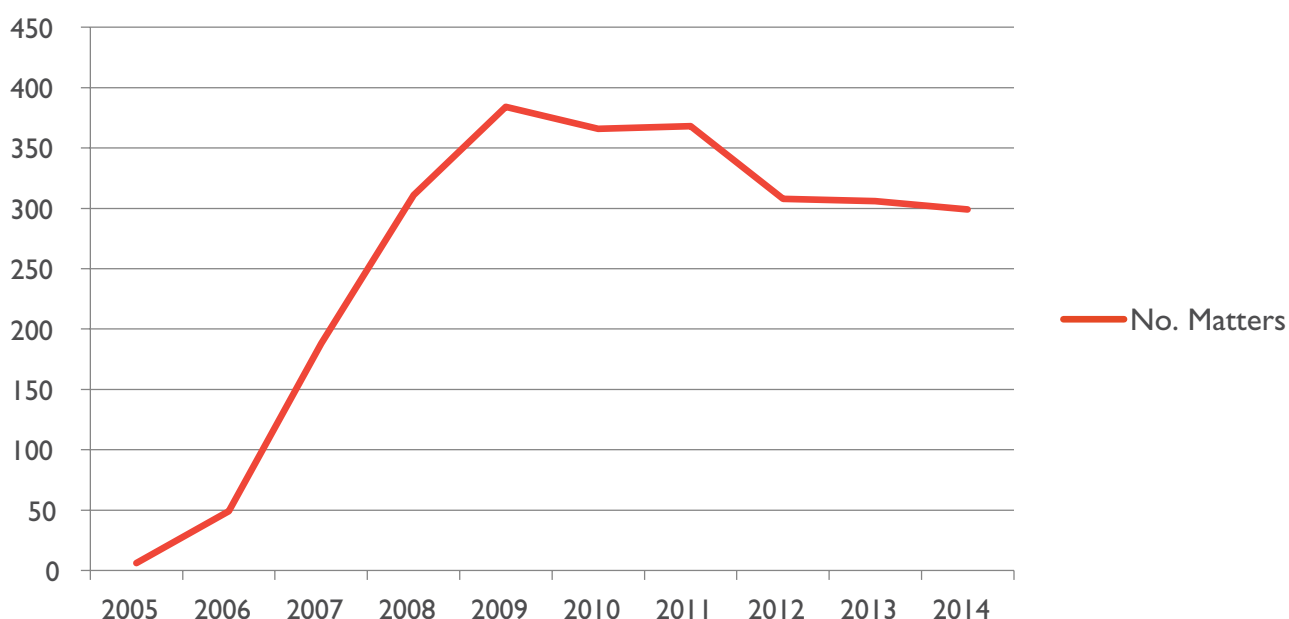
PILnet then leveraged its relationships with civil society contacts to identify suitable legal projects, and Cheroutes helped to make the projects attractive for international law firms.<sup>124</sup> Finally, PILnet secured institutional support from all the firms by engaging their pro bono departments directly in New York and Washington, DC.<sup>125</sup> PILnet officially launched its first clearinghouse in Hungary on 15 December 2006. The first projects that flowed through the Hungarian clearinghouse were a Polish Constitutional Court Claim for the Helsinki Foundation for Human Rights, comparative legal research on deportation policies for Human Rights Watch, comparative legal research on homelessness issues for the National Law Centre on Homelessness and Poverty, and research on anti-discrimination and equality law, for PILnet itself.<sup>126</sup> The early firms to get involved in the clearinghouse projects were Dechert, DLA Piper, Sidley Austin, Sullivan & Cromwell, and O’Melveny & Myers.<sup>127</sup>

## 2. Expanding Pro Bono Practice Across Europe

Having identified a model that worked, PILnet replicated its success in Hungary by launching a Global Clearinghouse later in 2006 and—with assistance from USAID, International Senior Lawyers Project (ISLP), and a few key law firms (notably, White & Case)—a Russia Clearinghouse in 2007. With these projects, pro bono practice across Europe grew quickly, as evidenced by the following charts.

**Chart 3.** <sup>128</sup>

**Active Matters in PILnet's Global, Hungary, and Russia Clearinghouses**



**Chart 4.** <sup>129</sup>

**Law Firms Participating in PILnet's Global, Hungary, and Russia Clearinghouses**

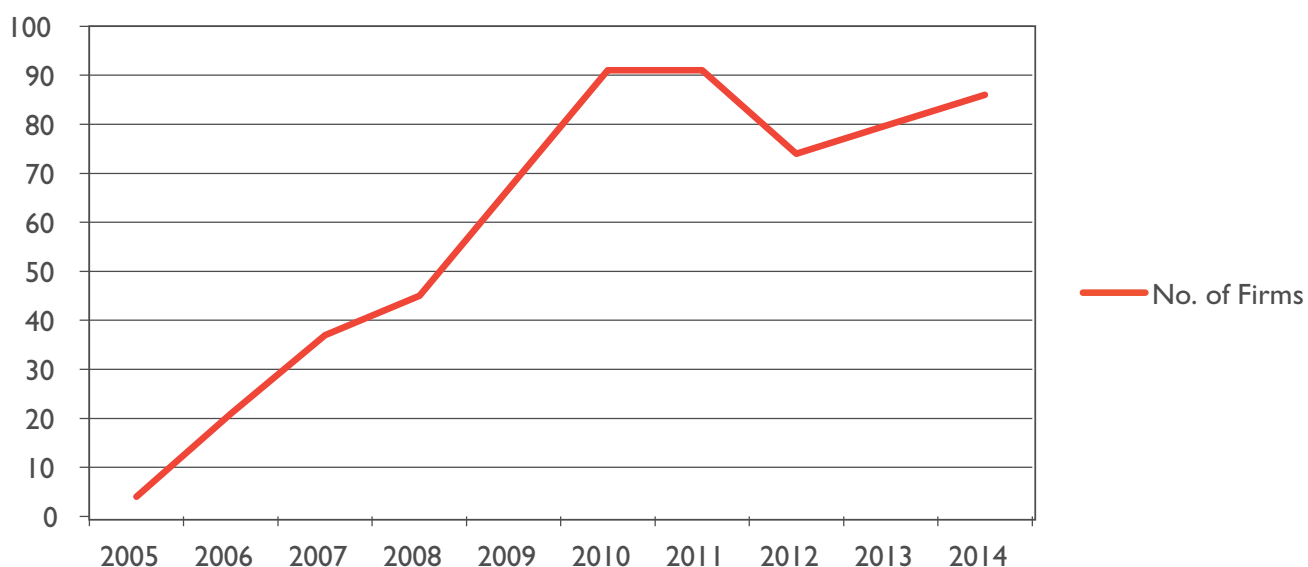
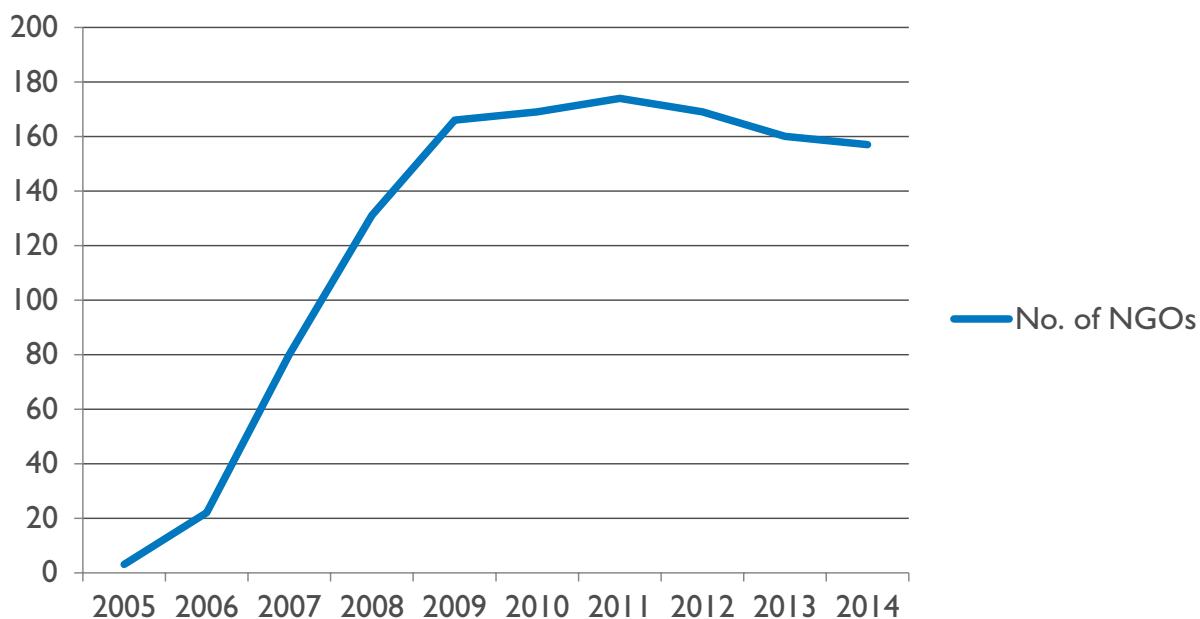


Chart 5. <sup>130</sup>

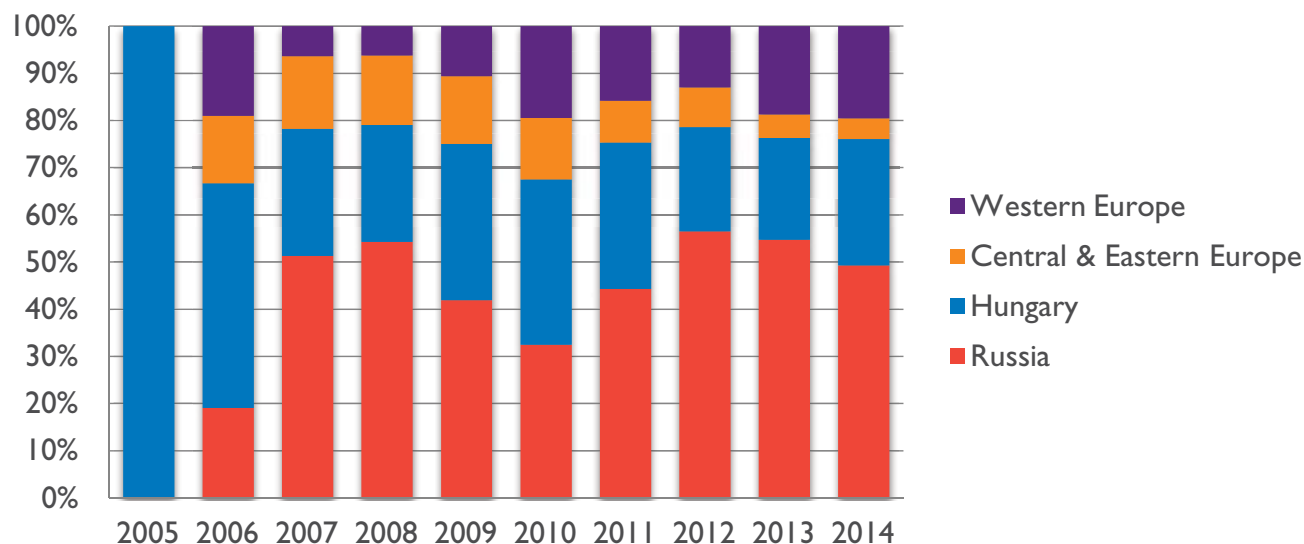
### NGOs Served By PILnet's Clearinghouses




PILnet has also expanded the reach of its services. The chart below illustrates that the clearinghouses, which were initially focused primarily on Central and Eastern Europe, had begun to serve (through the Global Clearinghouse) more and more Western European NGOs (which represented around 20% of all NGOs across all three clearinghouses in 2014).

Chart 6.

### NGOs Served, by Location, by PILnet's Clearinghouses







The total number of pro bono hours recorded across PILnet's clearinghouses in 2013 was nearly 10,000.<sup>131</sup> By comparison, New York Lawyers for the Public Interest, a New York-based NGO founded in 1976 that runs a clearinghouse for lawyers based in New York, recorded 16,000 hours in the same period, working with a comparable number of law firms as PILnet (around 90).<sup>132</sup>

### 3. Developing a Culture of Pro Bono Across Europe

Around this time, advocates used a number of strategies to continue to develop and expand the culture of pro bono across Europe.

#### a. Pro Bono Roundtables

In 2005, several pro bono directors at large US law firms piloted one important strategy for promoting pro bono in Europe: "pro bono roundtables." Pro bono roundtables essentially involved getting a number of prominent lawyers from leading firms in a relevant jurisdiction to literally sit around a table and discuss the viability and desirability of expanding pro bono practice in their country.

Suzie Turner at Dechert, an American, had been involved in pro bono work in the United States since 1987 and had worked in Europe as a consultant at the well-known British public interest law NGO Interights (now defunct) in 1999. Turner had been involved in organizing roundtables in the United States for many years already. This was "strict community organizing," Turner said. "You get people to move in a certain kind of direction; you try to convene and bring them together."<sup>133</sup>

Turner, together with British lawyers Felicity Kirk at White & Case and Florence Brocklesby at Debevoise & Plimpton, convened a pro bono roundtable at Dechert's offices in Munich in late 2006. Turner recalls, "It was one of those things where we didn't know if anyone was going to show up, and we were pleasantly surprised that people were really engaged."<sup>134</sup> The successful Munich roundtable was followed up by three more in Paris, Brussels, and Frankfurt in 2007.<sup>135</sup>

Arguably, the most successful of these early efforts were the Munich and Frankfurt roundtables. At the time, providing free legal advice was prohibited in Germany by legal ethics law (although, German lawyers nevertheless historically provided charitable legal services on an ad hoc and "don't ask, don't tell basis").<sup>136</sup> The roundtables

resulted in meetings between international law firms based in Germany and the Munich and Frankfurt Bar Associations to come to a compromise about providing free legal advice.<sup>137</sup> While waiting for a decision about their ability to act in domestic pro bono matters, an agreement was reached that German lawyers could assist non-profit clients abroad (as this would not contravene the rules). For example, lawyers at Debevoise & Plimpton became involved in representing Holocaust survivors in New York who required German law expertise in the context of US proceedings.<sup>138</sup>

The German roundtables also resulted in the publication, in 2008, of an influential article, "Rechtsberatung pro bono publico in Deutschland – eine Bestandsaufnahme,"<sup>139</sup> which argued that the prohibition on free legal services was intended primarily to tackle price dumping, whereas pro bono services existed outside of any system of price competition and were provided only to clients, such as non-profits, who would otherwise receive no legal services at all (even if lawyers were to lower their prices). Accordingly, they concluded that applying the prohibition on free legal services to pro bono work could not be justified.<sup>140</sup> The publication of this article put the firms at ease and paved the way for growing pro bono practice among international law firms in Germany.<sup>141</sup>

The roundtables (along with the European Pro Bono Forum, to be discussed below) eventually led, in 2011, to the founding of "Pro Bono Deutschland" (an association of around 50 major law firms with a presence in Germany), which has a mandate to "achieve greater recognition and a more widespread implementation of the concept of pro bono legal advice among lawyers" in Germany.<sup>142</sup> Similarly, the Paris roundtables contributed to the formation in 2009 of the Alliance des Avocats pour les Droits de l'Homme (Lawyers' Alliance for Human Rights). The Alliance was set up in collaboration with the Paris Bar and has a mandate to engage lawyers in providing free legal assistance in support of human rights causes.

Both Turner and Kirk were sensitive to the local contexts and the importance of identifying local pro bono champions to take ownership of the processes that they initiated. In the words of Kirk: "We hoped that out of the gatherings would come somebody who would take on the local management of that group. . . . It was definitely led by the local firm representatives. . . . It

never occurred to me that you would do it any other way. . . . I was quite sensitive to things not being imposed.”<sup>143</sup> Turner put it simply: “When the meetings started taking place in German instead of English, we knew we had done our job.”<sup>144</sup>

### b. New Pro Bono Clearinghouses

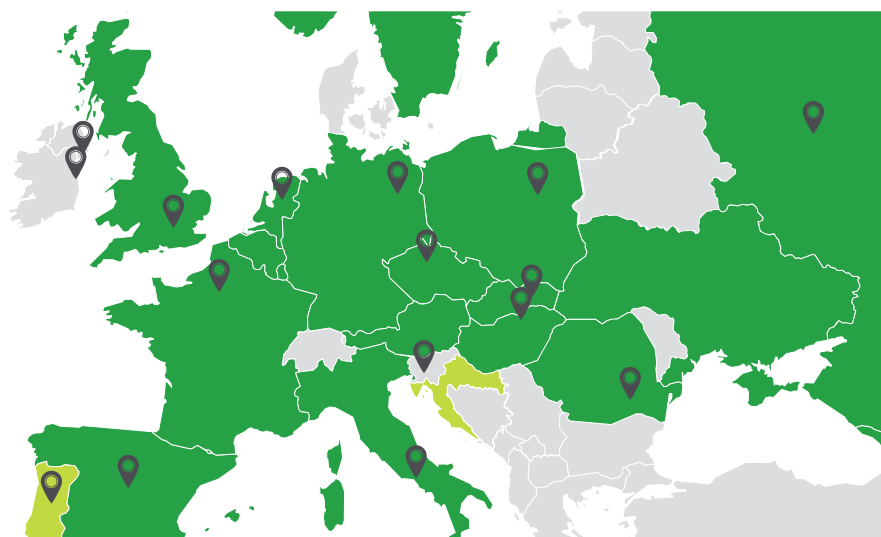
The roundtable experiments also led to the creation of new clearinghouses. For example, PILnet, which had been involved in the roundtables since the second one was held in Paris in 2007, began to use the format with success to launch new domestic clearinghouses across Europe. PILnet began by returning to Poland, where it had failed to launch a clearinghouse in 2004.<sup>145</sup> In June 2007, together with the Polish Legal Clinics Foundation, the Helsinki Foundation for Human Rights, and Ashoka, PILnet co-organized a roundtable discussion at the Polish Constitutional Tribunal.<sup>146</sup> This time, the law firms and their lawyers showed up in numbers and, what’s more, the president of the Polish Constitutional Tribunal and the head of the Polish Bar Association also attended the event.<sup>147</sup> The event resulted in the signing of a Polish pro bono declaration and directly led to the launch of a Polish clearinghouse (Centrum PRO BONO), which has continued to operate until this day.<sup>148</sup>


This was followed by a Czech pro bono roundtable in March 2008, the signing of a Czech pro bono declaration, and the launch of a Czech clearinghouse (Pro Bono Centrum).<sup>149</sup> A Slovenian clearinghouse

was also established in 2008, an Irish clearinghouse in 2009, a Slovakian clearinghouse in 2011, a Romanian clearinghouse in 2012, and Dutch and Italian clearinghouses in 2015.<sup>150</sup> In 2012, 20 domestic clearinghouse representatives took the decision, following a discussion at PILnet’s 2012 European Pro Bono forum in Madrid, to form the “European Pro Bono Alliance” to support and promote the work of its clearinghouse members and to strengthen, champion, and inform the European pro bono movement.<sup>151</sup> All of these clearinghouses have been largely successful thus far, although compromises have sometimes been necessary to secure the support of local bar associations. For example, the Czech and Italian pro bono declarations explicitly exclude individual client work from their definitions of actionable pro bono work.<sup>152</sup>

In the clearinghouses’ developmental stage, PILnet also played a role. For example, PILnet: (1) actively instigated the setting up of a clearinghouse, as with the Civil Society Development Foundation in Romania; (2) ensured that clearinghouses receive sufficient funding from law firm donors, as with Proboneo in Germany and Pro Bono Connect in the Netherlands; (3) helped clearinghouses better connect to law firms through its pro bono forums, as with AADH in France; (4) helped clearinghouses to build support and momentum domestically, as in Poland and the Czech Republic; and (5) shared its manuals (sometimes co-authored with other international clearinghouses) related to how to develop a clearinghouse and how to develop an in-house pro bono program.

**Map 1. Locations of European Pro Bono Clearinghouses**





The proliferation of domestic “sister” clearinghouses in Europe, inspired and mentored by PILnet, has paralleled the emergence of new global clearinghouses (connecting law firms with NGOs all over the world) such as A4ID, TrustLaw, the Vance Center, and i-Pro bono.

### **c. European Pro Bono Forums**

The European Pro Bono Forum, held annually since 2007, is another successful strategy that brought advocates together and helped to develop a pro bono culture across Europe over the last 10 years. The idea for the forum was on PILnet’s agenda since early 2006, and was advanced by PILnet staff (especially Ed Rekosh and Atanas Politov), as well as by Michael Cheroutes, Suzie Turner, Felicity Kirk, Miriam Buhl (Pro Bono Counsel at Weil, Gotshal & Manges), Patricia Brannan (partner at Hogan & Hartson), and Manfred Gabriel (senior associate at Latham & Watkins).<sup>153</sup>

The idea was to provide both a forum for connecting law firms and NGOs throughout Europe and a support network for European lawyers trying to set up law firm pro bono programs. The first forum in Budapest in 2007 attracted 122 participants from 20 countries, including 62 lawyers and 60 NGO representatives.<sup>154</sup> Among the speakers was Andrew Phillips (now Lord Phillips of Sudbury), who had set up the Law Society Pro Bono Working Party in England back in 1992, and the forum brochure even contained a foreword from the then-president of Hungary László Sólyom, noting that it was of “pivotal importance to eliminate disparities in accessing the goods of the legal system” and that “even if this task is eminently the domain of the state, lawyers in general bear responsibility for promoting justice by protecting the rights of the individuals.”<sup>155</sup> This concession, that the legal profession bore some responsibility with respect to access to justice, was an enormous coup for PILnet given the legal culture across Europe that had fiercely rejected this position.

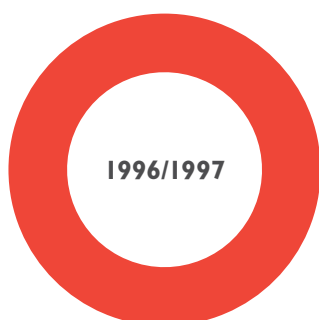
The first three forums (2007, 2008, and 2009) all took place in Budapest and drew increasingly large crowds; the 2009 forum attracted 150 participants from 32 countries.<sup>156</sup> Following the 2009 forum, Turner, who served on the organizing committee, recommended the idea, borrowed from the United States, of holding the forum in a different city each year.<sup>157</sup> Accordingly, the 2010 forum took place in Paris, attracting a record-breaking 275 participants, including the head of the Paris Bar as a keynote speaker. Later forums would be held in Berlin, Madrid, Warsaw, London, and Rome. In each case, the flurry of pro bono organizing that preceded the forum was enormously productive and has typically resulted in law firms in those jurisdictions making concrete commitments to increase their pro bono practice. In the words of Kirk, the “traveling model has been hugely successful [and] works on so many levels; you can get politicians involved, bar associations, NGOs, and law firm coordinators.”<sup>158</sup> The 2014 London forum resulted in the signing of the “Collaborative Plan” by scores of international firms, committing them to an aspirational pro bono target of 25 hours per lawyer per year across the firms’ UK offices and requiring them to “ensur[e] that a proportion of their pro bono work is directed to promoting access to justice for low income individuals.”<sup>159</sup>

The forums have also provided a supportive environment for local champions from across the continent to meet and trade stories. In the words of Marieanne McKeown, PILnet’s director for global pro bono, “Once you have recruited the local champions, then you can scale up towards greater impact [by] placing local champions in a supportive environment of like-minded people and supportive frameworks.”<sup>160</sup>

The general progression of events that contributed to building a pro bono culture in Europe is captured in the timeline below.

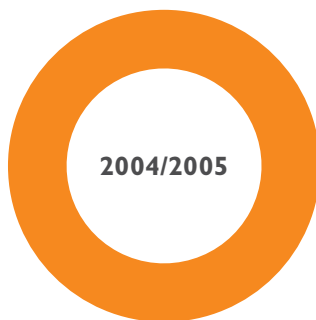
## Toward a Culture of Pro Bono in Europe

**PILnet** (formerly PILI) founded as an initiative of Columbia Law School.

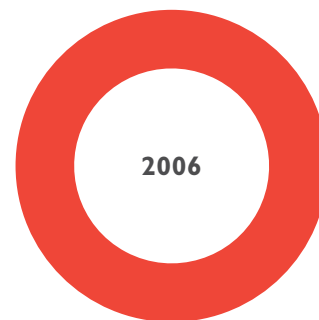


The **Solicitors Pro Bono Group** (now **LawWorks**) and the **Bar Pro Bono Unit** are established in the UK

PILnet launches the **Central and Eastern Europe Pro Bono Initiative**, a program aimed at institutionalising pro bono practice in CEE

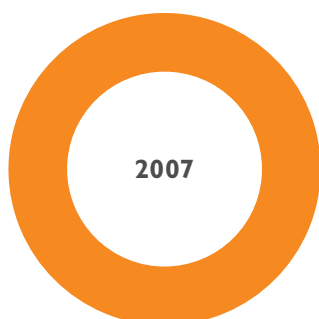


PILnet collaborates with the **International Senior Lawyers Project** and **Dechert** to launch its Hungarian and Global Clearinghouses.



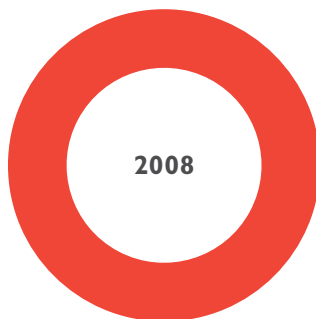
**A4ID** is established in response to the 2006 December Tsunami aiming to engage lawyers in global poverty relief

Polish clearinghouse **Centrum Pro Bono** is launched with support from PILnet



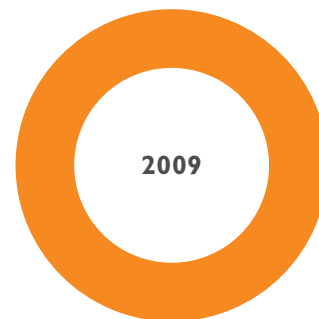
PILnet hosts the first **European Pro Bono Forum** in Budapest and launches its Russian Clearinghouse

French clearinghouse **Alliance des Advocats pour les Droits de l'Homme** and Czech clearinghouse **Pro Bono Centrum** are launched



Second annual **European Pro Bono Forum** in Budapest

Irish clearinghouse the **Public Interest Law Alliance** is launched

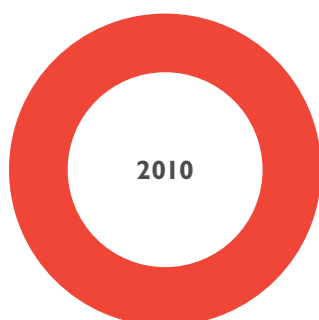


Third annual **European Pro Bono Forum** in Budapest



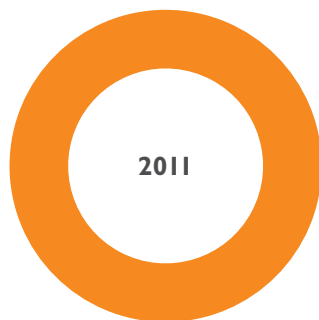


**TrustLaw** is launched by the **Thomson Reuters Foundation** aiming to provide a free international marketplace for pro bono



Fourth annual **European Pro Bono** Forum in Paris

The German **Pro Bono Deutschland** and Slovak Clearinghouse **Advokati Pro Bono (Nadacia Points)** are launched



Fifth annual **European Pro Bono** Forum in Berlin

A Romanian clearinghouse is launched as a project of the **Civil Society Development Foundation**



Sixth annual **European Pro Bono** Forum in Madrid

A **Ukrainian clearinghouse** is jointly established by the Ukrainian Legal Aid Foundation and Ukrainian Helsinki Union



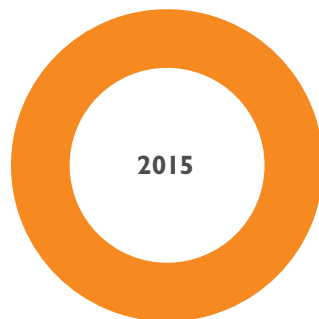
Seventh annual **European Pro Bono** Forum in Warsaw

Portuguese clearinghouse **PRO BONO Portugal** is launched as is German Clearinghouse **Proboneo** and Romanian **ACTEDO**



Eighth annual **European Pro Bono** Forum in London

Dutch Clearinghouse **Pro Bono Connect** and EU clearinghouse **The Good Lobby** are launched



Ninth annual **European Pro Bono** Forum in Rome

# IV. CURRENT CONDITIONS OF PRO BONO IN EUROPE

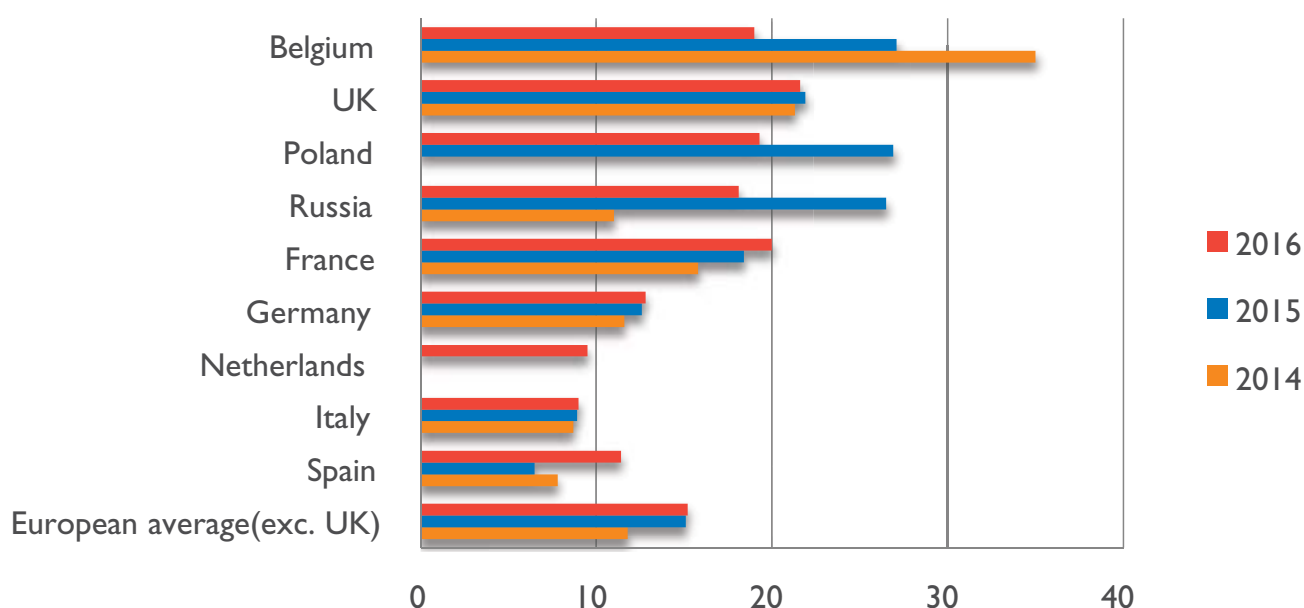
Organized pro bono culture has begun to take root across the continent over the past 20 years, especially in European capitals and at the offices of international law firms. However, the European pro bono movement is still in an emergent phase and cannot be said to be fully “institutionalized,” as in the United States or, to a slightly lesser degree, in Australia.

## A. THE AMOUNT AND GEOGRAPHY OF PRO BONO IN EUROPE

Over the past three years, around 14 hours of pro bono work has been conducted per fee earner on average in continental Europe. This is significantly behind the United States, where the average hours per fee earner are 70+, and Australia, where the average hours are 40+, but it is on par with Latin America and the Asia Pacific Region.<sup>161</sup>

Chart 7.<sup>162</sup>

Average Hours of Pro Bono Work Per Fee-Earner



However, as evidenced in the table above, the United Kingdom and Belgium (more accurately, London and Brussels, as pro bono is still very much a capital city—and international law firm—phenomenon) appear to be emerging as European pro bono hot spots.

While still not quite rivaling their counterparts in the United States, Brussels- and London-based lawyers are undertaking a significant amount of pro bono work and leading the way in Europe. London is probably at the top because it has the oldest tradition of pro bono, and it is also the second most popular destination globally for pro bono professionals (with New York coming first, Washington DC, joint second with London, followed by Chicago third, and Sydney fourth). As for Brussels, it comes in second probably because of the large NGO presence there. At present, there are over 500 NGOs with head offices in Belgium, and a Good Lobby survey of 100 of these revealed that over 50% are actively making use of pro bono.<sup>163</sup>

**Table 3. European Offices of 2I Firms Ranked by Respective Pro Bono Counsel in Order of Highest Average Engagement with Pro Bono in the Period 2014 to 2016.<sup>164</sup>**

Rank	City	Weighted Score out of 2I
1	London	15.50
2	Brussels	14.17
3	Budapest	14.00
4	Warsaw	13.25
5	Paris	12.80
6	Amsterdam	12.67
7	Rome	12.25
8	Munich	12.00
9	Moscow	12.00
10	Madrid	11.75

A survey of 2I pro bono counsel conducted for this report suggests that Budapest may be a third European pro bono capital. If this is correct, it is likely due to the fact that PILnet is based in Budapest and has operated its Hungarian clearinghouse from there since 2006.

## **B. THE ARCHITECTURE OF PRO BONO IN EUROPE**

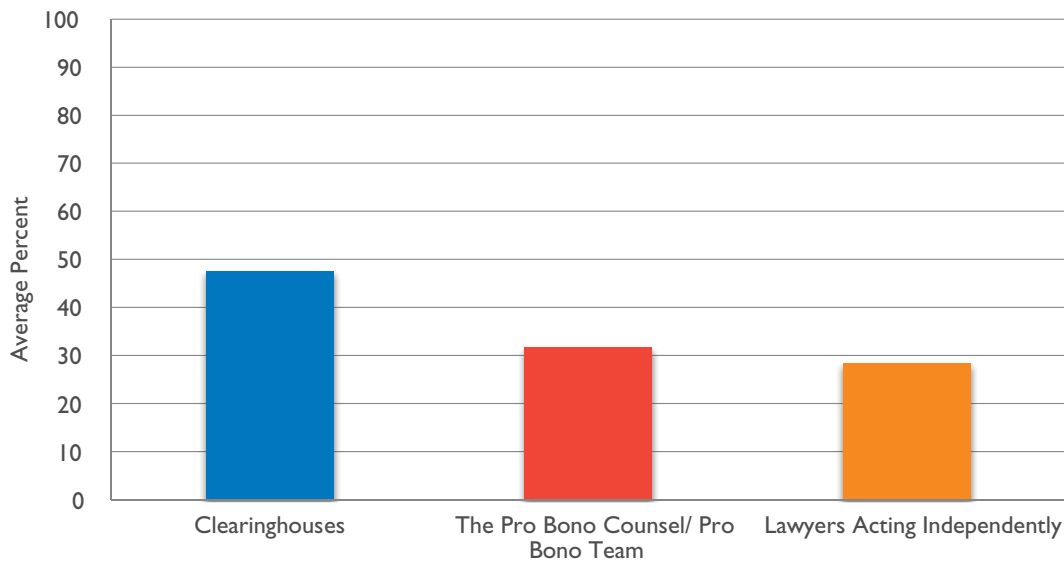
Although there is wide variance, law firms are still significantly dependent on clearinghouses for their European pro bono practices. Multiple interviewees reported making extensive use of clearinghouses to source pro bono matters for their European offices, particularly those whose European pro bono practices were managed from the United States rather than from London. In the words of one pro bono partner:

“There are now, thanks in part to PILnet, domestic clearinghouses in France, Germany, Italy, the UK. So in every country now there is a domestic clearinghouse where lawyers can source work. That has been the biggest impact for us to significantly expand pro bono internationally.”<sup>165</sup>

This anecdotal evidence is supported by the survey conducted among 2I firms, which revealed that the firms relied on clearinghouses, on average, for almost half of their pro bono matters.

Chart 8. <sup>166</sup>

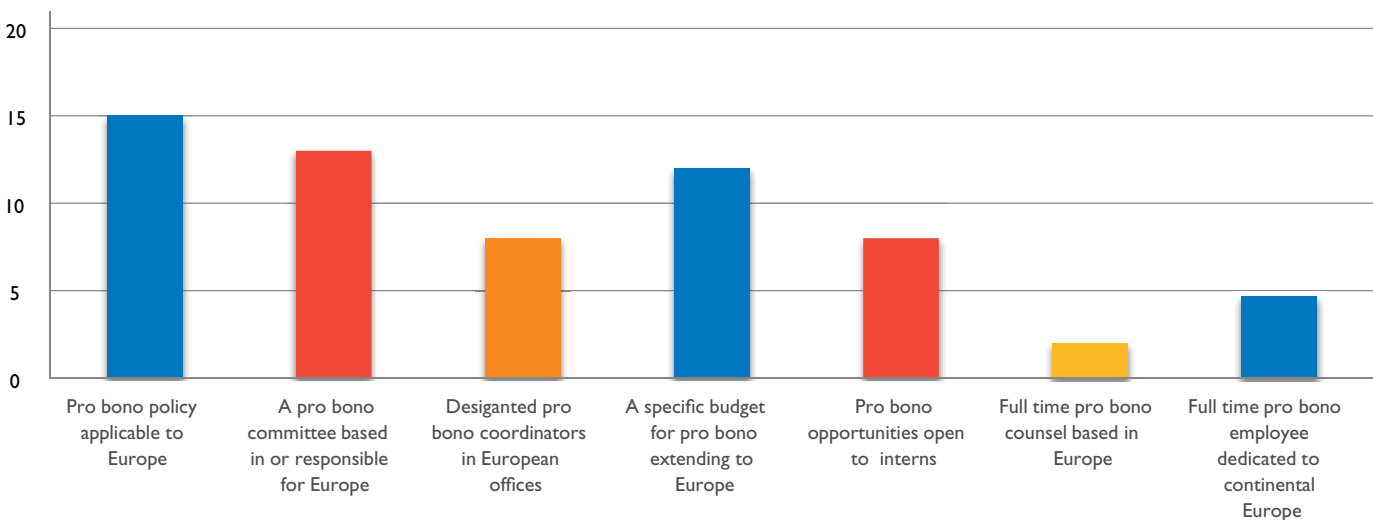
**How Pro Bono is Sourced in Europe**  
(Among 21 International Firms)



Other indicators, shown in the chart below, capture the degree of institutionalization of pro bono in Europe. For instance, nearly two-thirds of the 21 law firms surveyed maintained a pro bono policy that was applicable to their European offices, over half had a pro bono committee that was either based in or responsible for Europe, and just under half had designated pro bono coordinators in their European offices. However, very few had full-time pro bono counsel based in their European offices, and just one had a full-time pro bono position dedicated to continental Europe. However, over half of the surveyed firms linked pro bono to performance reviews in their European offices and just under half to bonuses. <sup>167</sup>

Chart 9. <sup>168</sup>

**Degree of Institutionalization of Pro Bono Practice in Europe**  
(Among 21 International Firms)





The picture this paints is of weak institutionalization of pro bono within European offices. What little institutionalization there is mainly seems to stem from global pro bono mandates flowing from New York, Washington, DC, and London. This creates a trickledown effect, which means that pro bono culture reaches (continental) Europe but only in drips and drabs. Beyond the local pro bono coordinators, who are simultaneously full-time fee earners, there does not appear to be any motive power forcefully driving pro bono practice within the continental European offices themselves.

From the perspective of beneficiaries, law firm pro bono in Europe is currently primarily provided to NGO clients. Interviews undertaken for this research reveal that most clearinghouses in Europe (both at the international and national level) exclusively cater to NGO clients (with a few exceptions in Romania, Ireland, and Hungary). Also, the survey of 21 firms conducted for this report found that 85% of all European pro bono work was carried out for NGOs,<sup>169</sup> and anecdotal reports suggests that is likely to be representative of European pro bono practice in general.

Many interviewees suspect that the reason for this is that it is simply easier for law firms to work for NGOs and for clearinghouses to source work from them. This is purportedly due to the fact that NGOs are more

similar to traditional corporate clients and thus easier to contact and more predictable with a lower risk profile than individual clients. Crucially, they do not require law firms to “make that leap from the corporate world to the community,” as one lawyer put it. In the words of one clearinghouse employee:

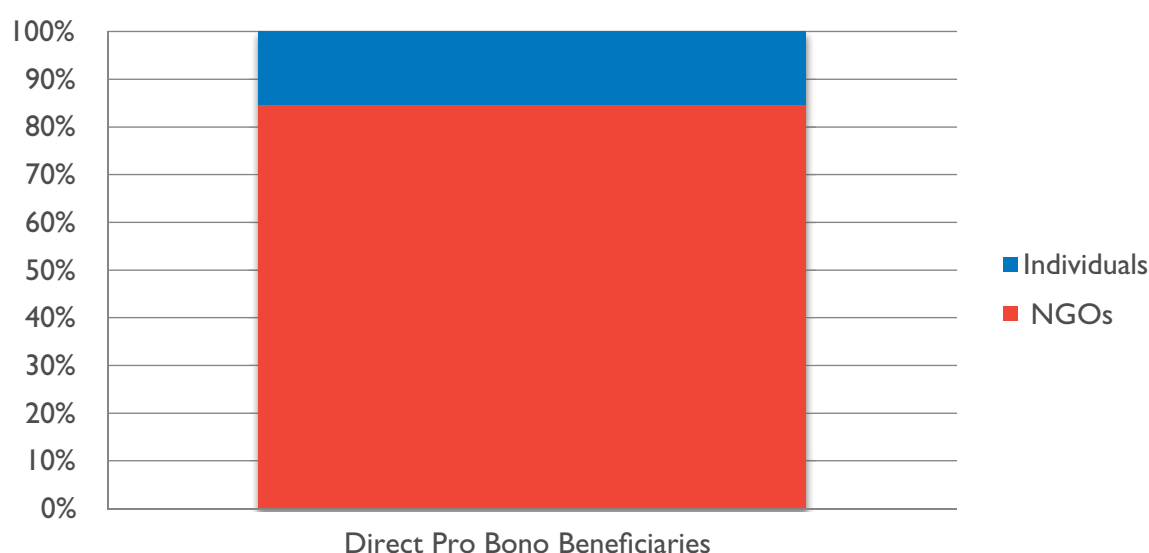
“The first thing the law firms will tell you is that their biggest fear is to open their doors and be overwhelmed by clients, by individual people [who need assistance]. They would never do that. They would never open their doors and say, ‘Come in, free legal aid’. . . . They need to be able to measure the time and money they are investing into each project. The first thing they will tell you is that we don’t want to be a legal aid center, we cannot be a legal aid center.”<sup>170</sup>


And yet, the survey for this report also revealed that law clinics (collaborations set up by firms with NGOs or law schools) providing advice to individual clients were maintained by 6 of 21 surveyed law firms. The same survey revealed that among pro bono counsel, there was only marginally more support for the statement, “Pro bono is best when lawyers are using their commercial expertise . . . to add value to the work of NGOs,” as compared to the statement, “Pro bono is best when lawyers are working directly for low income individuals to tackle issues that they face.”

#### Chart 10.<sup>171</sup>

##### Beneficiaries of Pro Bono in Europe

(Among 21 International Firms)





The political history of Europe is another factor that explains why pro bono in Europe has been targeted more at NGOs than toward individuals as in the United States or Australia. First, the well-developed state-sponsored legal aid systems in place across most of Europe have, for much of the 20<sup>th</sup> century and into the present day, meant that individuals have not had to rely on the charity of the legal profession for legal aid in the way they have in other parts of the world. Consequently, when pro bono began to take off across Europe in the mid 1990s and early 2000s, there was resistance from many national bars to the idea of large international firms undertaking pro bono work for individual clients and thus potentially depriving the national legal profession of work and undermining public (or public-funded) providers of services. For that reason, many of the national pro bono declarations brokered by PILnet, as well as the constitutive documents of domestic clearinghouses (e.g., in the Czech Republic, Germany, and Italy), explicitly exclude individual client work from the definition of actionable pro bono. This was arguably a strategic and necessary compromise to ensure that pro bono culture could at least begin to take root.

Finally, NGOs in Europe are historically far less legally sophisticated than their counterparts in the United States. Europe has not benefited from a robust “public interest law movement,” which in the United States gave birth to hundreds of NGOs with large legal staffs embracing complex legal advocacy strategies (e.g., the Environmental Defense Fund, the Mexican American Legal Defense and Education Fund, the National

Women’s Law Center, and the NAACP Legal Defense Fund).<sup>172</sup> Placing legal strategies at the forefront of civil society advocacy has had an enduring impact on US civil society, on how issues are framed, on what constitutes impactful advocacy, and on who non-profits hire.<sup>173</sup> To an extent, the global human rights movement, the influence of the European Court of Human Rights (ECtHR), and the emergence of the supranational EU legal system and the increasingly technocratic and law-oriented nature of EU policy are all, at least since the 1990s, having a similar impact on European civil society. Moreover, the work of PILnet, the Open Society Foundations, and the Ford Foundation (among others) in Central and Eastern Europe between 1995 and 2005 has achieved similar results there.<sup>174</sup> Nonetheless, European NGOs still lag behind their US counterparts; a survey of 100 EU policy NGOs revealed that just 32% of them had lawyers on-staff (50% of those with just 1 lawyer), and several of those lawyers were either exclusively or additionally handling compliance and operational matters rather than contributing to advocacy campaigns and programmatic work.<sup>175</sup> By comparison, a 2004 survey of around 300 public interest NGOs in the United States revealed that over 50% of them had more than 5 lawyers on staff (40% had ten or more lawyers on staff).<sup>176</sup> Consequently, NGOs in Europe arguably need pro bono assistance more than their counterparts in the United States.

# V. DILEMMAS AND DEBATES

There are a number of dilemmas and debates in the contemporary European pro bono movement about what pro bono should mean and how it should develop in the future.

## A. NGO CLIENTS VS INDIVIDUAL CLIENTS

The debate about whether pro bono in Europe is best placed at the service of individual clients or NGO clients is a hot topic. Although pro bono lawyers in Europe work mostly with NGO clients, there are compelling reasons why law firms might want to consider doing more for individuals in Europe in the present climate. The need is greater because, as a result of austerity, legal aid funding is in decline and eligibility is increasingly restricted (as in the United Kingdom, Sweden, the Netherlands, Belgium, and Ireland) and/or the cost of justice for individuals is on the rise (as in Italy, Spain, and Portugal). Also, hundreds of thousands of economic migrants, asylum seekers, and refugees are stranded in various parts of Europe, separated from their families and/or living a clandestine and insecure existence. Individual legal assistance will certainly not solve the migrant crisis, but it may go a long way toward improving the quality of migrants' lives in Europe.

Representative of the “pro bono for individuals” argument is that of Nicolas Patrick, pro bono partner at DLA Piper. Coming from Australia, where around 60% of pro bono practice is undertaken for individuals, Patrick struggles to understand the reluctance in Europe to provide pro bono to individuals. Seeking to make European pro bono practice sustainable over the long run by getting as many lawyers involved as possible, Patrick says:



When you focus on charities and non-profits, you can get [lawyers] to do one pro bono matter, but they do not necessarily come back for another one. . . . It is not inspirational. . . . If you get them to do a matter for a person who is being held in immigration detention and they are able to get that person released, they come back for another one because they have had an impact on somebody's life, they have got them out of detention and back with their families. It's the sort of thing that makes them want to come back and do more.<sup>177</sup>



For Patrick, inspiring individual lawyers is crucial to developing the long-term commitment of the legal profession to build a larger pro bono movement. At DLA, Patrick has put this philosophy into practice by setting up individual client “law clinics” across the United Kingdom and Europe, collaborating with specialist NGOs or university law schools in which DLA lawyers work alongside trained specialists for individual clients with specific legal needs, such as individuals trying to secure disability benefits or migrants seeking reunification with their families.<sup>178</sup>

Current PILnet President Garth Meintjes argues for the collaborative NGO model of pro bono because of its ability to create social change:



Yes, there are a lot of lawyers who . . . would like to do something where they have a real client who they can identify with and stand up for and feel that [they are] fighting for something. . . . That is all good and if it somehow changes the character of the legal profession and helps it to be generally more public spirited and conscientious, then I think it's a good thing. But I think if you are really asking corporate lawyers to go out and do something that public sector advocates are already doing, (1) you are putting the public sector support systems for that service at risk . . . and (2) you risk trying to do something with people who have less substantive legal expertise than the . . . NGOs and frontline advocates [they are assisting]. I am very skeptical of that approach as a meaningful way of achieving social change.<sup>179</sup>



One question Meintjes raises has to do with commercial lawyers working on substantive legal issues with which they have less experience than the advocates they are helping. Many interviewees for this report defended the ability of lawyers to acquire knowledge and skills around new areas of law quite quickly, especially when working alongside trained professionals. For example, Simmons & Simmons hired social welfare lawyer Diane Sechi to

run a social welfare clinic in London, which in its first year of operation took on 47 cases and won £90,000 in backdated benefits for clients. Says Sechi:



These lawyers have great analytical skills and fantastic research skills; they have got the skill set there to [adapt]. It's no bar to them that they have not done social welfare law. . . . Some of the Partners at Simmons & Simmons have been so engaged with a particular case that they themselves have become experts in an area of welfare benefits.<sup>180</sup>



The involvement of lawyers serving individual clients that Sechi speaks of is, at least in the United Kingdom, well developed. The UK Collaborative Plan for Pro Bono, which was launched in 2014, saw nearly 40 firms making a collective commitment to “ensur[e] that a proportion of their pro bono work [was] directed to promoting access to justice for low income individuals.”<sup>181</sup>

## B. EXPERTISE-DRIVEN PRO BONO

In the views of some, however important and impactful individual pro bono cases may be, it cannot and does not challenge the social and economic power structures that give rise to the need for legal aid in the first place. Individual legal aid work does not address the central concern of using pro bono for transformative social change, that is, change in the way that law works in society and the results it produces for those with power as compared to those without power. Meintjes says:



Pro bono gives you access to expertise within the legal profession that you would not otherwise have: know-how about tax, trade, extractives, mining, and environmental codes. [Law firms] have been developing that expertise on behalf of very well-paying clients and now that [can be made] available to civil society who can engage in high-level policy discussions that they would otherwise be excluded from.<sup>182</sup>



He continues:




The mainstream legal profession has grown and benefited from free market thinking at a global level. This has made them fantastically wealthy and encouraged them to open offices all around the world and to add staff and to grow. [However, sometimes] the way in which law is being practiced, is skewing outcomes in ways that further the interests of [the] rich and powerful . . . rather than a broader community and public. . . . We cannot deny that the way law is practiced globally does not produce results that benefit everyone equally. It's not nearly helping everyone and may be part of the rapid acceleration of inequality. It may be fueling disruptive consumption and resource depletion, which would happen less if law were more evenly available as a social process. If you could get equal levels of policy expertise on all sides of a policy issue, you could likely produce outcomes that were much more equitable, responsible, and sustainable.<sup>183</sup>



In Meintjes' view, by placing commercial law firms at the service of the public (both civil society but also, where appropriate, the state), not merely for its time and energy but for the particular commercial law expertise that it already has, law firms can radically alter the distribution of law and thus power in society. One example of that kind of work was a project coordinated through the ISLP that involved a number of lawyers (notably from Hogan Lovells) in supporting the government of Liberia to negotiate or renegotiate natural resource concession agreements, mineral development agreements, and investment contracts aimed at securing a better deal for Liberia.<sup>184</sup> Another example is Herbert Smith Freehills' Fair Deal Sierra Leone Program, in which it provided over £1.5 million of pro bono legal advice to the Government of Sierra Leone as part of a legal assistance facility accessible to Sierra Leone government officials (particularly those involved in attracting and supporting inward investment into the country).<sup>185</sup> The project was brokered in collaboration with the NGO Africa Governance Initiative.





Law firms may see work that capitalizes on their expertise to support NGOs, and even states, as worthwhile, although they may not agree about the framing of the argument by civil society. For example, Patrick says:



“There is growing evidence that equality is in everyone’s interest. It is in the law firms’ and their clients’ best interest that there is more equality. Where you have less equality, then you have less stability, you have war, all the things that interrupt business. [However] to view the situation as two sides competing against one another [the haves vs. have nots] is completely the wrong approach and we do not subscribe to that. Businesses are moving towards responsible business models that aim to situate them as responsible members of and contributors to communities.”<sup>186</sup>



Notably, the kind of work envisioned by Meintjes and other proponents of “expertise-driven” pro bono is typically targeted at the developing world and not at pro bono “at home” in Europe. Questions must be asked about whether law firms would feel equally comfortable providing this kind of pro bono assistance in Europe, for example, supporting the World Wildlife Fund or Greenpeace in lobbying initiatives targeted at the EU institutions related to agriculture or fisheries or providing free legal assistance to the governments of Romania, Greece, or Portugal to support negotiations with the European Commission, the European Central Bank, or the International Monetary Fund. These scenarios seem hard to imagine at present but certainly nothing should be ruled out.

In any event, there are ways that law firms can get—and already are getting—involved in expertise-driven pro bono work in Europe beyond the obvious example of providing governance and other operational legal support to non-profits. For example, law firms may become involved in providing legal training aimed at skilling up European NGOs to bring litigation targeted at national high courts and the European Court of Justice (CJEU) or to conduct lobbying efforts targeted at the European institutions. Such work is done for traditional paying clients and can be done without law firms needing to

get involved in specific advocacy campaigns, or with law firms acting “behind the scenes” and not appearing on the public record. This type of pro bono could ease the fear among some firms of politically exposing themselves and risking relationships with current or future clients. Indeed, the survey of 21 leading pro bono counsel revealed that two thirds (14 out of 21) moderately or strongly agreed with the statement: “Law firms should provide pro bono litigation support to NGOs across Europe,” while a third (7 out of 21) agreed with the statement: “Law firms should provide pro bono lobbying advice to NGOs, e.g., with respect to the EU institutions.”<sup>187</sup> However, just 6 out of 21 of respondents said their firm had actually provided litigation support to NGOs with respect to ECtHR or CJEU litigation, and only 3 out of 21 had ever provided pro bono lobbying assistance to NGOs with respect to the EU institutions.<sup>188</sup> So while the will may be there, the follow-up may largely still be to come.

Yet another interesting template for expertise-led pro bono work in Europe is provided by Orrick, which has worked with an NGO called Planet Finance (now Positive Planet) to provide microfinance in continental Europe, spreading capital to low-income individuals attempting to start small businesses.<sup>189</sup> Orrick lawyers were involved in crafting innovative financing transactions that were entirely new to the French legal system.<sup>190</sup> In the words of Rene Kathawala, Orrick’s pro bono counsel:



That is the best kind of pro bono in my view—doing sophisticated pro bono work that is delivering real benefits to low-income people, using the skills we have for an NGO that, without our support, couldn’t do it . . . I am always an advocate for meeting the needs of poor people as much as we can, but I also believe that our law firms are not necessarily in the best position to do [that]. . . . If we can be leaders in pro bono matters that benefit tens of thousands or even hundreds of thousands of people based on the transactional expertise we have, and we do those pro bono matters very efficiently, and we can do them at scale and in significant numbers, then we are doing as much if not more than if we do the individual [case] for low income individuals.<sup>191</sup>



### C. LEGAL RESEARCH: CONCERNS WITH QUALITY AND IMPACT

The interviews undertaken for the purpose of this report suggest that legal research—the production of research memos, comparative research reports, and so forth—forms a large part of the pro bono work that goes on across Europe. A survey of 100 NGOs listed in the European Transparency Register revealed that nearly 80% of them were interested in receiving, or had received, pro bono “legal research” assistance. This makes legal research the most common form of pro bono legal assistance by a margin of over 15% (followed by “governance/corporate” assistance).<sup>192</sup> Such research serves multiple purposes for NGO clients. It may: (1) help them to make stronger legal arguments in their advocacy before national or international public bodies, tribunals, and institutions; (2) give an NGO credibility, showing that they are “serious about an issue”; and (3) provide an independent and objective review of a legal issue, improving an NGO’s decision-making. Says one NGO employee: “If you are breaking your head with a problem [that] has some legal aspects but you do not know how to handle it, you go to a law firm and you see how they would handle it.”<sup>193</sup>

In recent years, pro bono legal research has contributed invaluablely toward some noteworthy NGO advocacy campaigns. For example, law firms worked alongside Georgian civil rights NGO, Identoba, which was involved in litigation and advocacy to remove a prohibition on gay men donating blood in Georgia. The law firms undertook extensive pro bono legal research into case law from other jurisdictions and the ECtHR to supplement the legal argument for the litigation and provide a comparative perspective. The litigation was successful, and Georgia’s Constitutional Court struck down the ban in 2014.<sup>194</sup> Another example is the work of White & Case with Fair Trials International. Multi-jurisdictional research carried out by some 28 lawyers across 18 of White & Case’s European offices into breaches of Articles 5 and 6 of the ECHR contributed to the development of three EU directives on the right to translation and interpretation, the right to information during criminal proceedings, and the right to access to a lawyer and communication with a consular official or nominated person.

However, despite the clear utility of legal research in particular instances for NGO clients, there are pockets of dissatisfaction with the focus on research. The dissatisfaction stems from all groups within the European pro bono movement (law firms, clearinghouses, and NGOs), but chiefly consists of two major complaints: (1) legal research output is not always reliable; and (2) legal research often has no identifiable social justice impact.

#### 1. Quality


Interviews with directors of leading NGOs and IGOs for the purpose of this report reveal that some (particularly those with the most experience making use of law firm pro bono) sometimes “find it difficult to rely on law firms for research, as opposed to operational projects, [as] law firms may lack expertise,”<sup>195</sup> in a given “legal or policy area,”<sup>196</sup> and so it “can be difficult for NGOs to find projects that match up well with what the law firms can produce.”<sup>197</sup> Where law firms are doing complex research on topics that fall well beyond their core areas of expertise, the concern from NGOs seems genuine. In the words of one interviewee at a leading international organization:

“

[One] problem is where law firms engage in areas of work where they do not have the expertise built up to take on that work, [and] so they are not able to deliver in the way they would have hoped. They may take projects that are particularly interesting or inspiring, and may secure greater engagement from their lawyers, but where they do not have expertise in those fields of law, the project will quickly encounter problems and may not be resolved satisfactorily. . . . It may be better to have law firms reviewing contracts, etc. That is what we need and that is what they can do well.<sup>198</sup>

”

A particular problem seems to exist in relation to comparative multi-jurisdictional research projects, which can prove challenging to coordinate and deliver.



In the words of an NGO director with a great deal of experience in making use of pro bono for such projects:



[Comparative] research projects may require from the law firm a set of skills and a manner of coordinating work that the law firm does not have [or] is not used to. Law firms are not always so successful at coordinating people, [and] some law firms should refrain from such projects if they are not able to treat them as fee-earning projects. . . . Law firms may even push for multi-jurisdictional, comparative projects simply to get as many lawyers and offices involved as possible. But this does not mean lawyers are used to working in this manner, especially on a pro bono project.<sup>199</sup>



The challenging nature of such projects is likely to be exacerbated where the question and purpose of the research has not been very clearly defined at the outset. However, of course, when done well, such research can be highly influential, particularly in a litigation setting:



Comparative multi-jurisdictional research projects may only work when the question is very specific. [For example], comparative law can be very powerful at European courts. But there must be a specific question in mind and a specific purpose such as convincing a court or body of x, y, or z. Comparative research should [be pursued with a purpose and] not out of curiosity. For instance, securing a preliminary reference is much easier if you can show differing interpretations of EU law across the Member States. . . . Such projects are especially important in [the EU] where you have 28 jurisdictions. . . . How can NGOs find out what the practice is in other jurisdictions? . . . NGOs have a crucial role to play in holding Member States to account . . . and such projects can play a key role in that respect.<sup>200</sup>




Many law firms are already taking steps to respond to these concerns, though more comprehensive action may still be necessary to ensure that law firms better define research at the outset, assume higher-level accountability for the output, and better involve non-commercial practitioners to add additional expertise. Law firms will likely need to also be more upfront about their level of expertise and even turn down work as necessary. Ultimately, investing in building expertise in areas of law relevant to European pro bono work would be a worthwhile project for law firms. Ideally, best practices could also ultimately be developed over time by law firms and shared among pro bono coordinators.

## 2. Impact

A second concern related to legal research centers around its impact. The concern here is both that legal research (again, particularly large multi-jurisdictional projects) may not be useful for NGOs and also that such research may ultimately have limited social impact. These two issues are likely linked; where NGOs are smaller or perhaps less sophisticated legally (i.e., they do not have any lawyers on staff or are new to making use of pro bono), they may simply not have the capacity to design valuable comparative research projects and they may also lack the capacity to absorb and productively make use of the wealth of legal information generated by such projects.<sup>201</sup>

In addition, regardless of the capacity of the NGO, there is a concern among the pro bono community about the impact and utility of legal research as a form of social justice lawyering. Indeed, a survey of 21 leading pro bono counsel revealed that nearly 40% of them moderately or strongly agreed with the statement: “Pro bono practice in Europe is far too reactive and research-oriented.”<sup>202</sup> DLA Piper is so concerned about the limited impact of research work that they are undertaking a review of some of the comparative research they have produced in recent years to understand to what extent large research reports were actually being used by the NGO and IGO clients who had requested them. Says Stas Kuzmierkiewicz, the pro bono associate responsible for the review, “Do lawyers give up hundreds of hours to produce reports that sit on shelves?”





When research is not reactive and rather part of a broader, longer-term advocacy plan it can have great impact. For example, TrustLaw is currently conducting a large research project that seeks to identify what forms of statutory compensation are available for victims of sex trafficking around the world. However, the work will not stop there; once the various statutory schemes have been identified, the next step will be to establish a project that enables people who qualify for those schemes to come to TrustLaw and secure a referral to a law firm to help them make an application under the relevant scheme.<sup>203</sup>

Clearly defining research at the outset appears to be crucial as does ensuring that it is part of a larger advocacy agenda and not an end in itself. If well defined and targeted at a specific litigation process, for example, particularly in the European context, comparative research can be incredibly persuasive for courts. Caution will be necessary when dealing with NGOs that have no legal staff or are new to making use of pro bono. Law firms should consider vetting NGO requests with experts (such as academics or public interest practitioners) to verify that the work would contribute substantially to the field. In addition, smaller NGOs might even consider appointing one or two mid-level lawyers to their boards to help them make better use of pro bono.

#### **D. “CONFLICTS OF INTEREST”: A SWORD OR A SHIELD?**

Interviews conducted for this report reveal sharp disagreement among European pro bono actors about how conflicts policies should be applied to NGO clients in the context of pro bono work. The survey of 21 leading pro bono counsel revealed that nearly half of the surveyed pro bono counsel agreed (moderately or strongly) with the statement: “Conflicts checks related to pro bono should ideally be strictly legal and not commercial.” It is clear from the interviews conducted that there are many firms that avoid pro bono matters that might in any way be perceived negatively by existing clients and/or prevent the firm from acting for clients in the future. Conflicts become particularly problematic for law firms where NGOs are engaged in fields of advocacy that encroach upon the terrain of

traditional commercial clients, such as environmental justice, consumer protection, and financial and economic justice. Additionally, any pro bono work that is likely to bring firms into direct confrontation with states and supranational institutions may also be problematic. There are those within the pro bono community who challenge that line of thinking. Garth Meintjes says:




What firms [sometimes] mean when they say [there is a] conflict is a conflict of a business interest. ‘My well-paying clients won’t like it if I do this.’ Well, too bad! There are well-paying clients who would not like it if we represent people in Guantanamo, does that mean you should not represent people in Guantanamo because some wealthy corporate client does not want you to? If that is what you are saying, then pro bono really is as vacuous as some seem to think it is and is not a potential source of social change. I do not think it is that vacuous, but people who espouse this kind of view, make it so. [We must look for] lawyers who have the courage to stand up for their convictions.<sup>204</sup>



Meintjes is not alone in this view. Özgür Kahale, pro bono director for Europe at DLA Piper, said she believes that firms should “start from the law,” rather than from a commercial or political risk perspective. Speaking of DLA’s work with refugees and asylum seekers, she said that DLA leadership has not avoided cases that are seen as too “political”: “These are people with an international human right to claim asylum, and we are helping them to claim their rights and it is in [states’] interests to take care of these claims as opposed to trying to resist and ignore [them],” she said. “[At DLA] we question everything. . . . We don’t think restrictively; we always think *why not* and *how*. Our starting point is everything is doable . . . our starting point is human rights law and ethical responsibility,” she continued.<sup>205</sup>

Indeed there are firms that are responsive to these kinds of views, taking a progressive approach and finding creative ways to get around such conflicts. For example, some firms are proactively seeking client waivers in





relation to pro bono work that might be perceived negatively rather than relying on general assumptions, acting for clients “behind the scenes” without appearing in the public record, and applying a flexible and minimalist commercial conflicts approach, which requires partner-level discretion only in certain circumstances.

Such firms can use their conflicts policy as a sword to expand the range of pro bono work that it is considered feasible for firms to get involved in and promote pro bono culture beyond the firm. For instance, in the context of client waivers, the firm may even seek to explain to the client why it is in their interest to support pro bono work.

It is hard to predict whether approaches to conflicts in the context of pro bono in Europe are likely to move in conservative or progressive directions in the coming years. The even balance of opinion revealed by the survey could be indicative of a gradual liberalization or it could reveal that firms are bound to always take different views on the matter.

## E. TREATING NGO CLIENTS LIKE FEE-PAYING CLIENTS

Ask almost any lawyer involved in the provision of pro bono and they will assure you that pro bono clients are always treated the same as fee-paying clients. Most of the pro bono counsel respondents of the survey for this report agreed with that assertion. Some NGO clients, however, sometimes felt differently. Although all those interviewed were largely enthusiastic about pro bono and complimentary about many of the lawyers they had worked with, they also questioned whether they were always treated the same as paid clients by pro bono lawyers. One NGO director said:

“Broken promises are difficult. NGOs do not expect law firms to fail on delivery, but they do. . . . It’s key to have good people who buy into what you are doing and a shared ownership of what you are doing, people who are responsive to feedback. Others only care about hours and may drop off once the hours are done. All law firms will say that they treat their paid clients in the same way as unpaid clients, but that is not true. There is quite some variance.”<sup>206</sup>

Echoing this sentiment, another said:

“

“Law firms must change their mentality with respect to pro bono. If you are going to take on a project, take it on professionally. If you are going to make a commitment, then make a commitment, treat it the same as you would fee-earning work. Don’t just say that you will do it the same way all work is done; actually do it.”<sup>207</sup>

”


Under-commitment can affect the quality of the final work product, but the relationship established at the outset can also affect the final product. One interviewee said:

“

“Law firms tend to approach pro bono work from their perspective and not from the client’s perspective. It’s all about them and not about the client—particularly the pro bono coordinators. They have been given a brief, for example: “Involve as many lawyers in as much pro bono work as possible,” and so they are looking for a certain kind of work. They have an idea of the perfect pro bono project, which often does not line up with the needs of the NGO. Law firms need to change their mind-set and meet the NGO half way in trying to understand what is in it for the NGO. NGOs feel like they are pitching something to them that they need to accept rather than them wanting to know how they could assist. If I was a paying client, I would not need to explain to them why this was a good case.”<sup>208</sup>

”

This is a central critique of pro bono—that it exists more for the benefit of the law firm than for the benefit of the ostensible beneficiaries. If accurate, this critique is a blow for those who desire pro bono to be a legitimate and impactful form of social justice lawyering on a par with other public interest work.



There are also other concerns of a less significant but still important nature. A survey among 100 NGOs registered in the EU Transparency Register found that, among the 54% of NGOs that were making use of pro bono, although the overwhelming majority was satisfied with the services received, there were some common complaints such as: (1) poor reactivity of lawyers; pro bono often not available on-demand when it is needed; (2) lawyers sometimes have insufficient expertise in relevant fields of law/policy; (3) lack of transparency around the number of pro bono hours that are available to a client; and (4) a desire for longer-term relationships with lawyers who “get” them rather than fleeting relationships with an ever-changing body of lawyers.

On the one hand, it is not realistic to expect that pro bono clients would receive the same level of service as clients who are paying large fees for top-quality legal service from law firms driven by a profit motive. On the other hand, if pro bono as an enterprise is to be about more than enhancing employee morale, if it aspires to be more than “cheap PR” (as some claim it is), then the concerns expressed by NGOs are worth taking into account. It is notable that each of the NGOs’ grievances are, in the private client setting, entirely remediable, so the fact that they are not addressed is not because they are impossible challenges.

One way to address the NGOs’ concerns is to rethink the concept that the main task of getting more lawyers involved in pro bono should always be the forefront of the field’s strategy. That mentality is not always conducive to quality outcomes. More important would be to involve lawyers who commit to the work of the NGO and take a degree of ownership over it. This raises questions about the utility of pro bono work that involves multiple lawyers doing a small fragment of a much larger research project, particularly where this is the only type of pro bono work available for some of those lawyers. It may be necessary for pro bono counsel to source a limited range of carefully selected pro bono projects catered to the known social justice interests of their lawyers’ (as perhaps identified via survey). Projects could be selected to enable a substantial degree of autonomy to the lawyers who will be working on them (among other possible selection criteria such as, e.g., likely social justice impact, manageability, likelihood of success, overlap with firm expertise,


etc.). Lawyers should then be given a choice of which among the carefully selected projects to work on, thus enabling them to pursue social justice as they define it, whether that be in terms of environmental justice, non-discrimination, or whatever the case may be. Many firms will have some of these measures in place already. The key is to move toward more rigorous project selection and matchmaking.

It would also be useful if firms could apply oversight that it typically uses for its paid work to pro bono work. That could include involvement of the hierarchical chain of command, multiple-person review of work product, linking work to performance reviews, ensuring that work is done at the appropriate level so a lawyer will not be required to undertake work that is beyond their level of competence, and incentives such as bonuses and firm-wide recognition for a job well done. Many firms are already, to a large extent, treating pro bono work like fee-paying work in these ways. For others, more can be done.

Finally, firms could better monitor and evaluate their pro bono work and also create better client feedback channels. Firms could measure impact and usefulness of their pro bono work by institutionalizing client feedback mechanisms and procedures for learning from and responding to criticism. The work currently being undertaken by DLA to assess the long-term impact of their pro bono legal research output to explore to what extent large research reports their lawyers produce are actually being used by NGO and IGO clients is a positive step in the right direction. Indeed DLA has even gone so far as to have external consultants review some of their large pro bono projects.<sup>209</sup> However, even something as simple as systematically soliciting feedback from clients in the middle and at the end of a project would be a big step in the right direction.

## **F. LAW FIRM COLLABORATION: AN EMERGING TREND?**

A promising finding of this research is the overwhelming consensus among pro bono lawyers and NGOs around the idea that law firms can and should collaborate more in the context of pro bono. More specifically, there is wide support for the idea that law firms should collaborate to tackle systematic challenges such as the



decline of state legal aid or the migrant crisis. Most of the law firms surveyed for this report agreed with that idea. Support for this idea was also found among NGO interviewees, with one NGO director lamenting that:

“Law firms collectively do not understand how they can collaborate to help the NGO sector. . . . Law firms need to talk to each other to create coordinated and concerted efforts to deal with systematic issues. They need to start acting in the way that NGOs already are. Focusing on what the sector is trying to achieve and taking a multi-disciplinary, intersectional, collaborative, concerted approach.”<sup>210</sup>

There are encouraging signs that law firms are taking steps in this direction. The Collaborative Plan for Pro Bono in the United Kingdom, launched following PILnet’s 2014 European Pro Bono Forum in London, is perhaps the leading European example in this regard. The plan, which has been signed by nearly 40 law firms, seeks to “improve pro bono service delivery in the UK.”<sup>211</sup> There are a number of core strategies articulated in the plan (including information-sharing and the setting of a voluntary and aspirational pro bono target of 25 hours of pro bono per fee-earner per year); however, the most interesting is probably the commitment by all firms to “ensur[e] that a proportion of their pro bono work is directed to promoting access to justice for low income individuals.” This plan includes commitments to collaborate such as: (1) creating task forces to focus on subject areas (e.g. immigration) or demographic populations (e.g. homelessness) and to share information between firms working on similar issues; (2) work as a group to learn from experiences, create opportunities for smaller firms to get involved, and spread the cost of providing training and resources; and (4) create a ‘referral network’ to pass cases to other law firms.<sup>212</sup>

The scale and form of collaboration envisioned by the plan is very much in line with the hopes of the NGO director expressed above (albeit not targeted at supporting the NGO sector). This plan provides an exciting example of how the private sector can play a support role where the public sector is failing in this current climate of austerity across Europe.

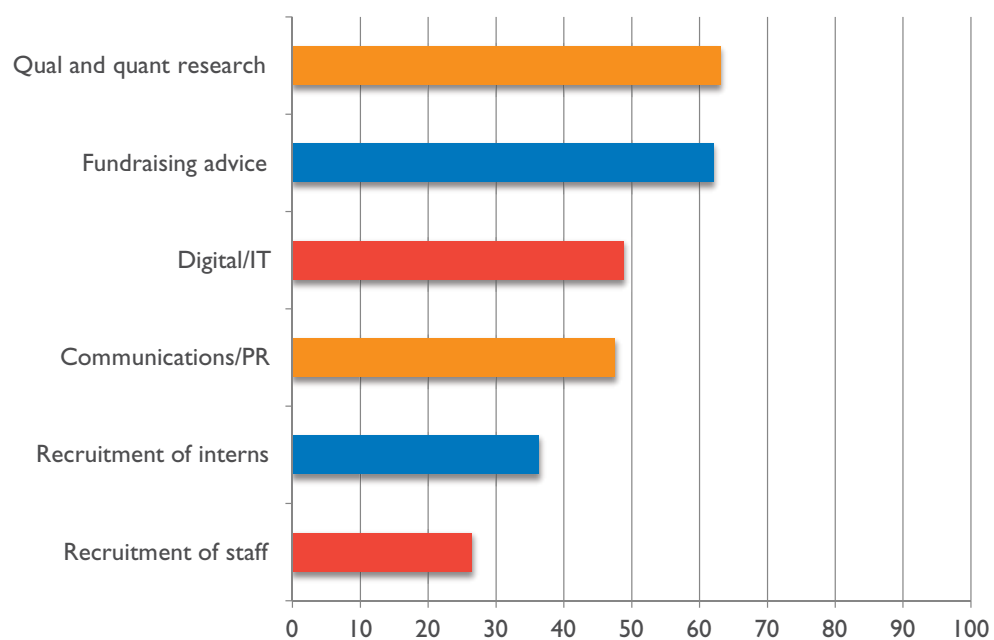
## **G. BEYOND LAW: ENGAGING LAW FIRM SUPPORT STAFF IN PRO BONO**

The pro bono movement, or “skilled volunteering,” as it is called in other circles, is not exclusive to law. Organizations like the Tap Root Foundation and Catchafire (making business talent available to NGOs), Datakind (engaging data science experts on projects addressing critical humanitarian problems), and St. Bernard Project (enlisting tradesmen to rebuild houses for disaster victims) have been promoting pro bono beyond the law for many years. In Europe, organizations dedicated to enabling all manner of business professionals and academics to volunteer their skills are emerging in Germany (Proboneo), Spain (Fundación Hazloposible), France (Pro Bono Lab), and Poland (Fundacja Dobra Sieć). In the Netherlands, a highly innovative project called Beursvloer was launched as early as 1996. It is an annual “marketplace” (or stock exchange) where companies, volunteer organizations, and local authorities can meet and build partnerships, matching their supply and demand.

And while public interest lawyering has a long history, the practice of law firms engaging their support staff in skilled volunteering has not been well developed. Large multinational law firms are staffed with particularly qualified legal secretaries, document management and printing experts, communications and design specialists, human resources personnel, IT support staff, and security, catering, and business development staff. The survey carried out by The Good Lobby revealed that among non-legal needs, NGOs were most interested in receiving pro bono support for: qualitative and quantitative research (63%), fundraising (62%), digital and IT (48%), communications and PR (47%), recruitment of interns (36%), and recruitment of staff (26%).<sup>213</sup> With the help of the organizations in Europe available to support these connections, pro bono and CSR professionals at law firms could provide support for NGOs in some of these areas.

Chart II.<sup>214</sup>

### Non-Legal Needs of NGOs





# VI. THE PRESENT AND FUTURE OF PRO BONO PROFESSIONALS

## A. THE PRO BONO PROFESSIONAL'S ROLE

Full-time pro bono positions are few and far between in Europe. Of the 21 pro bono counsel surveyed for this report, six firms had full-time pro bono counsel in London and one had full-time pro bono counsel in Paris. Although the survey is not representative, it is likely that location pattern is representative. At the time of writing, DLA Piper has a full-time pro bono director for Europe based in Paris and a pro bono associate based in Amsterdam; it is unlikely that there are many more full-time pro bono lawyers beyond these. Accordingly, across continental Europe, those with responsibility for pro bono management are typically either full-time fee earners doing pro bono in their spare time or full-time CSR professionals (or even PR in one case)<sup>215</sup> coordinating pro bono as part of their duties. Additionally, those firms with full-time pro bono roles in London typically expect those personnel to take responsibility for pro bono practice across the whole of Europe.

These are small numbers, especially when compared to the United States, where there are now 150+ full-time pro bono lawyers based at 90+ firms across the country.<sup>216</sup> It is not clear that Europe must try to produce comparable numbers of full-time pro bono counsel, but expanding the number of full-time pro bono lawyers would mean consequently professionalizing the role. Amanda Smith, pro bono partner at Morgan Lewis, is a strong advocate of the importance of professionalizing the pro bono role:



Regardless of the underlying forces that led to the institutionalization of pro bono [in the United States], one key ingredient—and there are very few firms that have been able to achieve any success in this area without it—is the professionalization of the pro bono counsel role. The presence of a full-time pro bono counsel is the single most important contributing factor to success.<sup>217</sup>



This is a process that is already under way in London, and it is viewed by some as a process that is contributing “to the growth of pro bono in other countries in Europe.”<sup>218</sup> London-based pro bono professionals have even begun to get together to organize training around pro bono management.<sup>219</sup> In the United States and Australia, full-time pro bono positions are located in many of the larger cities

where law firms are either headquartered or maintain a significant presence. If law firms in Europe follow that model, full-time pro bono positions will likely emerge in Paris, Brussels, Amsterdam, Moscow, Berlin, or Rome (and in fact, this growth is already being pursued by DLA Piper). It seems likely that the institution of full-time pro bono lawyers is likely to have a rationalizing impact on pro bono practice in Europe, rendering it more systematized and predictable in terms of quality output. These “generalist” pro bono managers would likely perform a similar role to their counterparts in the United States or Australia, sourcing opportunities for their lawyers, managing relationships with NGO clients and partners, structuring collaborations, and generally being advocates for pro bono culture within their respective firms and beyond by seeking further institutionalization.


Another model to consider is the one that is just starting to emerge in London, pioneered by Simmons & Simmons: the “specialist” full-time pro bono lawyer model. As mentioned above, Simmons & Simmons have employed Diane Sechi, a qualified social welfare lawyer, to run a social welfare clinic for them in London. The clinic was set up in 2015 to provide “end-to-end” appeals stage support to social welfare claimants. In the words of Sechi:



“The problem facing a lot of corporate law firms is that while they may have good will, how do they make that leap from the corporate world to the community? . . . Law firms need a filter or mechanism [between them and the community]. . . I [have been] that interface with the front line agencies. I have a desk out in the community [where vulnerable] clients need to be seen.”<sup>220</sup>



Sechi believes “specialist lawyers could replace generalist pro bono managers” and that “the model could be replicated, “but you need the right kind of social welfare lawyer who understands the corporate world a bit more.”<sup>221</sup> That model would do much to allay fears from some quarters that pro bono practice may weaken or replace the work of frontline advocates. In this model, rather than replacing them, organized pro bono practice would support them with the backing and resources of a multinational law firm. However, there was very little appetite for a move in this direction among the 21 pro



bono counsel surveyed for this report. Nearly two-thirds of those surveyed (13 out of 21) moderately or strongly disagreed with the statement: “Generalist pro bono managers are a thing of the past, the future lies in specialist pro bono lawyers who bring a particular skill set to a firm.” Just 2 out the 21 expressed any form of agreement with the statement. Accordingly, commitment for that model would likely need to come from the top of the firm, rather than from the pro bono professionals. Also, “specialist” and “generalist” pro bono professionals could coexist, performing separate and complementary functions. Indeed, there was overwhelming support in the survey (15 out of 21) for the statement: “Generalist pro bono managers will always be crucial to firms because, even though firms may specialize their pro practice, it will remain important/necessary to retain breadth of practice.”<sup>222</sup>

Another possible direction suggested by Özgür Kahale involves the democratization of the pro bono role. Kahale believes strongly that Europe will take its own path with respect to pro bono practice and is not likely to mimic developments elsewhere:



How the Americans, British, and Australians operate is totally different from how things work in Europe. In the US it's about pragmatism and practicality; they come up with an idea and if they like it they do it, and if it works they scale it up, and if not they destroy it and do something else. That is not how it works in Europe, the Old Continent. [Europeans] watch the Brits, Americans, and Australians [and] think to themselves, ‘Let’s see how this goes. If it develops well, we might try it. If not, we will avoid making the same mistake.’ . . . Sure, everything takes longer in Europe, but that does not mean things are not happening; there is just a different pace and different way of doing things and [Europeans] prefer to do things their own way. . . . One thing can be predicted: if we can inspire and empower lawyers, if pro bono practice is run in a more inclusive way—not so much about pro bono management and pro bono managers—but a more bottom-up approach that allows everyone to become pro bono managers in their own right, then we can entrench pro bono in European society.<sup>223</sup>



Kahale suggests enabling each lawyer to define social justice and pro bono practice in their own terms, taking personal responsibility for the identification and selection of clients and projects (presumably within a supportive

institutional environment), rather than emphasizing the importance of professionalizing the pro bono manager role. This is an approach that is also supported by Atanas Politov, PILnet’s director for programs, who suggests that pro bono in Europe should be about active citizenry rather than the development of a pro bono profession or pro bono specialists:



I’m not sure if having [full-time] pro bono departments is the best way. . . . Pro bono is just part of being a lawyer. . . . In the grand scheme of things, I don’t care whether you do pro bono for the Wild Bird [Fund], your grocery shop owner from around the corner, or the Polish Helsinki Foundation for Human Rights. . . . What matters is that you are an active citizen and you use your professional legal skills to be one, which means that you become part of civil society.<sup>224</sup>



This idea somewhat divided the crowd when it was put to the 21 pro bono counsel in the survey. While nearly half (13 out of 21) disagreed with the statement: “Pro bono practice [in Europe] should be democratized so that every lawyer in a firm can be, to an extent, their own pro bono manager,” nearly a third (5 of 21) agreed.


## B. THE PRO BONO PROFESSIONAL–NGO RELATIONSHIP

Another area in which there is disagreement, confusion, and sometimes frustration surrounds the relationship between pro bono professionals and NGO clients. Is the pro bono professional a gatekeeper, a facilitator, or an activist? In the words of one NGO director:



Law firms have very different ways of doing pro bono, different ways of organizing pro bono. This can confound NGOs. In some cases, you may have access to the lawyers who are actually doing the work. In others, the [pro bono] managers or coordinators may act as a barrier, which can frustrate things. It can be very difficult to work out how to make progress with that kind of role. . . . There is a real difficulty where you have teams or coordinators that are very corporate and unable to understand the needs of the pro bono client.<sup>225</sup>





Interviews with NGOs indicate that very often what the NGOs would prefer is a direct relationship with a handful of lawyers who know and understand their work. Intermediaries of any kind, whether clearinghouses or pro bono managers who do not fully grasp the NGOs, can be perceived as gatekeepers who complicate rather than facilitate lawyer-client relationships. NGOs find it particularly frustrating where pro bono managers or clearinghouse staff appear to be screening or interviewing them, looking for a particular kind of client or project:



[P]ro bono coordinators . . . have an idea of the perfect pro bono project, which often does not line up with the needs of the NGO. . . . NGOs feel like they are pitching something to them that they need to accept rather than them wanting to know how they could assist . . . too much of a CSR approach rather than a lawyer-client approach.<sup>226</sup>



This can be particularly problematic when it manifests as a seemingly arbitrary preference for certain kinds of work and disinterest in others:



“Law firm pro bono remains at the whim of [pro bono managers] or the head of CSR . . . such that each law firm will have a different interest. One may decide we like cats, the other migrants, and the next children. . . . Priorities seem random.”<sup>227</sup>



Indeed, some causes are not popular. Worryingly, examples were provided to the author, during the course of the research for this report, of European lawyers making disparaging remarks about certain causes (such as Roma rights or migrants’ rights) in conversation with NGO workers. There is a real risk that law firms will avoid “unpopular” work. The question is whether it is better to have a pro bono manager who is passionate about a specific cause or just driven by the pro bono cause in general. There seem to be pros and cons to both.

On the other hand, NGO clients also see great value in the pro bono manager role, especially where the pro bono professionals have some understanding of the work of the NGO. In the words of one NGO director, “Having coordinators that have a human rights or international law background and can read through what fee-earners have done and operate as a quality control mechanism is crucial.”<sup>228</sup> Indeed, there are some pro bono professionals who intimately understand their NGO clients. In the view of Atanas Politov, some pro bono managers function more as “undercover NGO agent[s] [and] many even used to work for NGOs.”<sup>229</sup> The NGOs respond positively to this, often feeling as though they have a fellow activist who understands and believes in their work, but with access to significant resources, which can be powerfully brought to bear on their advocacy.

Overall, NGO interviewees did seem to appreciate the central importance of the pro bono manager role as a “facilitator” mediating between the NGO and law firm, despite their confusion surrounding the exact nature of the role and where loyalties lie. It seems that NGOs feel that, in particular, those professionals who see their primary function as CSR, centering on the needs of the firm rather than social justice lawyering in the public interest, are sometimes less supportive. The full-time pro bono role is somewhat existentially underdetermined in Europe at present. To an extent, each pro bono professional will always bring their “personality” to bear on the practice, as one pro bono counsel put it. However, there may be some need for better communication by pro bono professionals and more transparency around how the various pro bono relationships should ideally unfold and perhaps also a more concerted effort to really listen to the needs of clients and understand them and their advocacy.



# VII. THE PRESENT AND FUTURE OF PRO BONO CLEARINGHOUSES

There are now, partly thanks to PILnet, domestic clearinghouses all across Europe. In addition, there are several international clearinghouses based in London and New York. Although all clearinghouses essentially perform the same task, that is, connecting law firms with pro bono clients and pro bono projects, the approaches they take to this task, their funding models, and what they consider to be part of their natural mandate vary considerably. While some clearinghouses developed specifically as pro bono organizations (such as Pro Bono Connect in the Netherlands or Law Works and A4ID in the United Kingdom), more frequently, they are offshoots of pre-existing organizations, taking their character, model, and mission from those institutions. For example, they may have emerged from or been inspired by grantmaking foundations or resource organizations that cater to civil society (such as PILnet, the Civil Society Development Foundation in Romania, or Proboneo in Germany), or they have emerged from corporate foundations or foundations catering to university law clinics (such as TrustLaw or Centrum Pro Bono in Poland) or perhaps from broad domestic public interest law organizations (such as PILA in Ireland).

Virtually all clearinghouses spend the first several years of their existence investing most of their energy into matchmaking and market-making—in other words, building a market for pro bono by recruiting both law firms and NGOs to the cause and then matching firms with NGOs and NGO projects. However, as the European clearinghouse movement, which commenced with the launch of PILnet's Hungarian clearinghouse in 2006, begins to mature we are beginning to see some significant innovation.

## A. STRUCTURE OF EUROPEAN CLEARINGHOUSES

### 1. Supply-Side and Demand-Side Clients

Of the nine clearinghouses and quasi-clearinghouses (four international and five domestic)<sup>230</sup> studied for this report, virtually all focused primarily or exclusively on catering to NGO clients on the demand side. There were some exceptions, such as ACTEDO in Romania or Law Works in the United Kingdom, which cater largely, or exclusively, to vulnerable individuals. Clearinghouses that traditionally cater to NGO clients are increasingly

exploring ways to provide support to individual clients. For example, PILnet's Hungarian clearinghouse has recently commenced a project in collaboration with the Chance for Children Foundation and three law firms to pursue a compensation claim against a school on behalf of 62 Roma children who were unlawfully segregated.<sup>231</sup> Meanwhile, TrustLaw has launched a project that will eventually engage firms in pursuing statutory compensation claims on behalf of victims of sex trafficking.<sup>232</sup>

In terms of supply-side clients, all clearinghouses researched worked largely with international law firms and their local offices (some exclusively so), or large national law firms and a handful of small firms and individual lawyers. The ratios in the case of each clearinghouse varied significantly. For example, Centrum Pro Bono in Poland had about one-third international law firm members, one-third large national firms, and one-third medium and small national firms.<sup>233</sup> The Civil Society Development Foundation in Romania works almost exclusively with the local branches of international firms and had just two national firms in their network.<sup>234</sup> Around a quarter of the law firm members for Proboneo in Germany and AADH in France were national firms.<sup>235</sup> Ultimately, while there was still heavy reliance on international law firms, there was, without exception, a degree of engagement with the national legal market that was promising in terms of the domestication of pro bono culture across Europe.

### 2. Pro Bono Model

European clearinghouses take different approaches regarding the type of pro bono services they focus on. For example, while TrustLaw focuses largely on the governance, comparative research, and operational legal needs of NGOs, PILnet's Global Clearinghouse focuses on more programmatic, including human rights, work. At the domestic level, there was also no clear consensus. While clearinghouses in Poland, Germany, and Romania (i.e., the Civil Society Development Foundation) largely prioritized operational needs, clearinghouses in France and Hungary focused overwhelmingly on human rights work. Yet others, such as PILA in Ireland, took a varied approach.

Clearinghouses tend to capitalize on the pre-existing networks and skill sets of their founders and host organizations. This “pre-history” and “start-up capital”





of clearinghouses feeds into their mission and self-identification. For example, while TrustLaw has been able to harness the market-making and journalistic powerhouse that is Thomson Reuters (producing powerful exposé-like pro bono legal reports shedding light on new issues such as sex trafficking or domestic workers), PILnet was able to take advantage of its huge network of civil society organizations and public interest law advocates across Central and Eastern Europe (enabling it to rapidly scale up a pan-European clearinghouse movement by tapping into civil society across the continent). This has been equally true at the domestic level where, for instance, Centrum Pro Bono was built on the extensive relationships of its founders with the Polish legal establishment (allowing it to establish a highly prestigious annual pro bono award bringing together Poland's legal elites) and AADH on the experience of its founder with international human rights law (aiding it to engage firms in cutting-edge human rights work related to, for example, child trafficking).

### 3. Funding Models

Funding models are also varied. While several clearinghouses relied substantially or even exclusively on law firm charitable donations (such as PILnet's), others charged membership fees to law firms and/or NGO clients (such as A4ID, AADH, and Pro Bono Connect), while still others received foundation grants or even operated as corporate foundations (such as TrustLaw). Overwhelmingly though, the trend seems to be a move toward reliance on the law firms themselves for funding. This is a promising trend because law firms may be more likely than donor agencies to be committed for the long term. In addition, given that clearinghouses typically rely on multiple firms for support, their funding pool should be sufficiently diversified to avoid collapse if one or more firms decide to cease funding.

## B. EUROPEAN CLEARINGHOUSE PRACTICES

### I. Creating a Supportive Pro Bono Environment

Many clearinghouses have incorporated into their mission the broader goal of promoting pro bono culture within the legal profession and seeking the institutionalization of pro bono in various ways. The clearinghouses have faced challenges in this respect, from resistance to the idea of volunteerism (with many Europeans believing that it is incumbent on the state to remedy social ills), resistance to the culture of talking about “doing good”

(many Europeans believe that charitable work should be done but not talked about publicly), and resistance to the perception that pro bono is a US imposition.<sup>236</sup>

Clearinghouses have developed strategies to overcome such cultural obstacles. For example, they have sought to secure buy-in from the legal establishment (high courts, justice ministers, ombudsmen, etc.), build a sense of pride and prestige around pro bono work through the establishment of the European Pro Bono Award, and identify precursors to pro bono in European legal practice and use them to counter the idea that pro bono is an exclusively US tradition.<sup>237</sup> They have also done much to pursue institutionalization by negotiating “pro bono declarations” signed by law firms and other key players in the legal establishment of relevant jurisdictions and by helping to establish other clearinghouses through knowledge-sharing (e.g., producing pro bono manuals) and training. Their efforts at institutionalization have also sometimes meant seeking compromises and agreements with various national Bars and justice ministries, for example vis-à-vis: the exclusion of individual representation from the definition of pro bono (for example in the Czech Republic, Italy, and Germany); exemptions for pro bono in relation to the prohibition of lawyers to advertise (for example in Poland and Italy); exemptions for pro bono in relation to the prohibition of lawyers to provide free legal services (for example in Germany and Romania); and exemptions for pro bono from VAT rules related to service provision (for example in Hungary and Poland).

PILnet's clearinghouses have led the way in a number of efforts to develop the culture of pro bono in Europe. For example, Centrum Pro Bono in Poland developed the first pro bono award in Europe.<sup>238</sup> A leading Polish newspaper sponsors the award, launched in 2003, and its jury members have included the ombudsman, the Minister of Justice, the head of the Supreme Court, the head of the Constitutional Court and the head of the Polish Bar. Meanwhile, PILA in Ireland has successfully advocated for the inclusion of a term in all government procurement contracts that any firm that secures such a contract has to give back 5% (of the value of the contract) in pro bono and CSR contributions.<sup>239</sup> The Civil Society Development Foundation in Romania has managed to place pro bono in the Ministry of Justice' justice development strategy in order to exert pressure on the Romanian Bar to take a favorable position on pro bono, and have also managed to lobby to include pro bono or public interest litigation in some of the donor

grants they manage for civil society organizations (e.g., they have managed to support around 100 separate legal claims related to human rights and anti-discrimination via a European Economic Area [EEA] grant scheme they manage).<sup>240</sup>

## 2. Expanding Pro Bono to Rural Europe

It is clear from the interviews that organized pro bono in Europe is still predominantly a practice being embraced by large international firms and, consequently, is a capital city phenomenon. Even in the United Kingdom, where pro bono culture is older, the practice is still largely confined to London in several key respects.<sup>241</sup> In the words of Tamás Barabás, senior legal officer at PILnet, “Pro bono is a capital city phenomenon, only capital cities have the big law firms and the major NGOs that have a stable structure, stable funding, stable staff, and stable activities.”<sup>242</sup> Atanas Politov of PILnet is concerned about this fact, saying that pro bono “should not just be a top law firm, capital city phenomenon, but that will take a while.”<sup>243</sup> Barabás says:



The general opinion [of rural] lawyers is that [they] do not have time, money, or interest to do [pro bono]. If there are NGOs with EU funding in rural Hungary, then lawyers are not willing to work for free for them. . . . [In Hungary] you have nearly 13,000 lawyers who are really struggling for their daily existence. They do everything, like a mixed soup . . . commercial, criminal, real estate. Especially in the rural areas, [the] majority of lawyers are struggling. . . . They [say], ‘Most of my clients cannot pay anyway’.<sup>244</sup>



He continued:



Also it's generational, attorneys in the countryside are . . . in their 50s, 60s, or 70s, [and] they do not understand the rationale of doing pro bono. . . . In continental Europe, we expect that if someone has a problem, it should be solved by the state—especially the older generation.<sup>245</sup>



Another challenge is that lawyers are disappearing from rural Hungary, in part because of the massive expansion in farm size in recent years, which has meant legal work that used to be generated by small family farms has disappeared. These lawyers have moved to the small towns of 80,000+ people, where they can make a decent living.<sup>246</sup>

Despite these hurdles, two clearinghouses are taking steps to address the bias for capital cities and Big Law in the European pro bono movement. In a recent project, PILnet's Hungarian clearinghouse has collaborated with the Chance for Children Foundation and three law firms aimed at pursuing a compensation claim against a school in rural Hungary on behalf of 62 Roma children who were unlawfully segregated.<sup>247</sup> The children resided and attended school in Gyöngyöspata, a Hungarian village of around 2,500 inhabitants, 11% of whom are Roma. Gyöngyöspata came to international notoriety in 2011 when, for two months, various Hungarian militia groups terrorized the local Roma community by marching through the village shouting abuse at the Roma population.<sup>248</sup> The case, orchestrated by the Chance for Children Foundation, is being litigated in Eger, a town of around 60,000 inhabitants in Northern Hungary, approximately 140km north east of Budapest and 60km east of Gyöngyöspata. PILnet has involved three firms of differing sizes to perform separate functions. The Budapest office of the international law firm Allen & Overy is drafting the appeals and organizing meetings between the NGO and the other firms. Gárdos Fűredi Mosonyi Tomori Law Office, a Hungarian firm based in Budapest and specializing in medical compensation claims with 17 lawyers is assisting with its unique expertise related to making compensation claims. Finally, Nora Hernadi, of Hernadi & Kovacs Law Firm, a small Budapest-based firm, is travelling to Eger and Gyöngyöspata to deal with the local administration and to collect evidence. PILnet was unable to identify any lawyers from Gyöngyöspata or Eger to take the case on a pro bono basis, but the project at least sees firms of differing sizes coming together to take on a case that will provide some support to marginalized inhabitants of rural Hungary and in this respect it is innovative.

The Romanian clearinghouse ACTEDO, meanwhile, specifically focuses on providing advice to vulnerable populations in rural and provincial Romania such as “Roma, women, people with disabilities, HIV positive persons [and the] LGBTI community.”<sup>249</sup> In that work, ACTEDO has been successful in involving small provincial law firms, such as six-lawyer firm Costaş, Negru and

Associates, based in Arad and Cluj Napoca, and two-partner firm, Chiriță and Associates, also based in Cluj Napoca.

Other clearinghouses also have a broader strategy to promote pro bono at the provincial level and tackle the absence of pro bono culture outside of big cities. One way to do this is to engage law schools or government-run NGO resource centers, such as those in every county and a local bar association in Hungary. PILnet, having excellent relations with law schools as a result of its decades of work promoting clinical legal education across Central and Eastern Europe, has encouraged them to set up clinics. The clinics then invite volunteer lawyers to participate and supervise via the local bar associations. Students provide advice to the local NGO community, in collaboration with the NGO resource center, under the supervision of leading local attorneys. Provincial attorneys who might otherwise have avoided pro bono are more likely to participate through a clinic because of the prestige of being affiliated with the local law school.

Even among those clearinghouses that are not focused on rural Europe, there was an awareness of the need to move beyond capital city and multinational firm work and a willingness (often already concretely manifesting) to engage small and national firms. Some of the UK and Irish clearinghouses, for example (PILA, Law Works, and the Bar Pro Bono Unit) were doing some work outside of the capitals with regional firms and with hundreds of barristers based across Ireland and the United Kingdom.

### 3. Automated and “Intelligent” Matchmaking

Clearinghouses are increasingly making use of technology to upgrade the rather analogue system of matchmaking that has been in place for several years. TrustLaw was a pioneer in this regard, seeking at its founding to inject technology into pro bono practice. Jim Jones, board chair of the Pro Bono Institute, assisted Monique Villa, CEO of the Thomson Reuters Foundation, to develop the initial idea for TrustLaw. He recalls a conversation in Minnesota in 2009 that led to the development of the initial idea:



What we came up with was the original kernel of the idea which became TrustLaw . . . a combination of a very smart application of technology with a matching program to try and bring lawyers and law firms together with significant NGOs and social enterprise organizations.<sup>250</sup>



TrustLaw built an online platform that could automatically connect NGOs and law firms all across the globe. But although the platform was built, NGOs needed much more coaching and their requests needed to be carefully scoped by a lawyer before a law firm could engage with them.<sup>251</sup> As one TrustLaw employee later reflected:




At the end of the day, the [online] platform is just a tool for our staff to facilitate the service, but it's our staff, their expertise, that are the key part of the service.<sup>252</sup>



Other clearinghouses have experimented with technology to facilitate their matchmaking, but none has yet created true automation. For example, Centrum Pro Bono in Poland also developed an online platform, where NGOs members can complete a form with a request for legal assistance. This request is then reviewed by the pro bono coordinator of Centrum Pro Bono who, after some back and forth and revision, will formally accept the request. Once a request has been accepted, any law firm member, by logging in to the members area of the website, can see the request (and browse others) and select it to take the project forward.<sup>253</sup> Again, the system does not work perfectly and law firms do not always log in frequently, so the coordinator must also send the firms a weekly newsletter with all accepted matters (i.e., the traditional “analogue” approach to matchmaking).

Beyond technology, another approach that is being taken to improve matchmaking is referred to as “intelligent matchmaking.”<sup>254</sup> The Good Lobby is an EU law and policy focused clearinghouse that seeks to match the large number of Brussels-based EU advocacy NGOs with the Brussels-based international legal community and the EU academic law community. The Good Lobby leverages the insight of its founders and a network of academics and legal professionals to identify pro bono volunteers with expertise specific to the project. For example, in a project related to fracking for Food & Water Europe, The Good Lobby identified a postdoctoral researcher and a PhD student based in Belgium, an academic based in France, and a lawyer based in London—all with extensive knowledge and expertise in EU energy law—to develop a toolkit on EU law for local fracking campaigners across Europe. This labor-intensive model of clearinghouse operation is yet to be truly tried and





tested and the first projects of The Good Lobby have not been without issue, but the method does seem to have the potential to overcome some of the significant concerns expressed by NGO clients in relation to the expertise of volunteers and quality of output.

#### 4. Thought Leadership, Coalition Building, and Agenda Setting

In addition to the new discrete efforts described above that, a broader vision is also being explored by a number of clearinghouses across Europe who are questioning the received wisdom of their purpose and the larger questions of how to use pro bono as a form of progressive legal activism.

The international clearinghouses and pro bono organizations such as PILnet, TrustLaw, ISLP, the Pro Bono Institute, A4ID, and the Vance Center are all beginning, in different ways, to embrace a thought leadership role. For instance, A4ID seeks to “increasingly move towards being a thought leader” with respect to the role of law in the developing world and the business and human rights movement.<sup>255</sup> They do so in part via organizing training sessions for the legal community. Meanwhile, TrustLaw seeks to become a “think tank around pro bono,” for example, by identifying ways in which law firms can use pro bono to improve the position of women around the world, from domestic workers to sex trafficking victims.<sup>256</sup> They do so by enlisting the help of firms and producing detailed investigative reports exploring issues that may not have been legally analyzed before. In addition, they hold trainings on social enterprise and impact investment for lawyers in the hope of linking the pro bono movement up with those movements. ISLP, for its part, focusing on sustainable development, has produced reports analyzing issues around the social, humanitarian, and environmental impact of investment into the developing world.<sup>257</sup> The Pro Bono Institute has been a thought leader around engaging corporates in pro bono. PILnet has not traditionally played a thought leadership role, but in its catalytic, “blank canvas” and “big tent” approach, it has been focused on the big questions of culture-building, capacity-building, and institutionalization. Indeed, to an extent, PILnet has actively avoided being associated with

any particular cause, which seems to often be implicit in thought leadership. In the words of Rekosh, “PILnet is agnostic as to issues. . . the local actors have to determine the agenda.”<sup>258</sup> However, incoming president Garth Meintjes looks set to change this approach, and he wants to move PILnet to take more of a leadership role as well, especially in getting firms involved in work that might have traditionally been off limits due to perceived “commercial conflicts”—work that has the power to radically alter how law works for those without money and power in society.

Meanwhile at the national level, clearinghouses are also beginning to take leadership roles in one way or another. One method being embraced by clearinghouses is coalition-building. Clearinghouses bring together various actors (lawyers, academics, students, NGOs, politicians, public officials, and journalists) to work on particular advocacy campaigns. In many respects, this is a natural extension of the clearinghouse matchmaking function. However, extending this function beyond the traditional lawyer-NGO dichotomy is an interesting and noteworthy development in Europe. For instance, the EU clearinghouse The Good Lobby often brings together senior academics, students, and legal professionals in its pro bono projects. The HEC-NYU EU Public Interest Clinic, the sister organization of The Good Lobby, has even brought journalists at Politico Europe together with law students, a handful of professors and a blogger to work on a project aimed at exposing a lack of transparency in the EU judicial system. Meanwhile, PILA, the Irish clearinghouse, builds law reform working groups comprised of lawyers (solicitors and barristers), several NGOs, and academics to promote legislative reform in relation to specific issues.<sup>259</sup> PILA sets the agenda, frames the issues at stake, and then drives the process forward when energy is flagging. In this manner they have worked on issues to do with housing policy, victims’ rights, and energy efficiency in private homes.<sup>260</sup>

Time will tell whether this trend of clearinghouses increasingly taking agenda setting, coalition building, and thought leadership roles is just a fad or, rather, a sign of the maturation of the European pro bono and clearinghouse movements.





# PILNET CONCLUDING REFLECTION: ARE WE DOING ENOUGH TO MAKE LAW WORK FOR ALL?

*The author thought it appropriate, rather than end with a summary conclusion to an ongoing effort, to invite PILnet to end the report with a reflection on the opportunities and challenges facing it and the field going forward.*

As detailed in this report, much good work has been done to develop a culture of pro bono in Europe and beyond. Over the past 10 to 15 years, an impressive array of actors, working on both the public and private sides of the profession, have begun assembling an infrastructure to better harness the potential of using the power of law for the public interest. Making this infrastructure work effectively and sustainably is not easy and requires further collaboration and problem solving, but we can rightly be pleased with what we have accomplished.

However, we cannot rest on our laurels. The field of public interest law—or rather the place of public interest in law—is at a pivotal stage in its development. Law has never been more relevant than it is today. The global challenges facing the world require collaboration and coordination on a scale that is not possible without the effective use of law. And the two greatest and most urgent problems threatening our future—growing inequality and climate change—are directly tied to the way we are using and not using law.

A fair assessment of the field at this time would undoubtedly conclude that law is still not working well for everyone. Human rights advocates see this in the discriminatory and unequal enforcement of rights. Corporate lawyers see this in the need for more pro bono to help deserving clients who cannot pay. Development and aid workers see this in the way a lack of rule of law inhibits progress and sustainability. And we all see it in the desperate plight of refugees and migrants fleeing hostile or less habitable regions.

At the same time, law is working very well for some. Changes in law, particularly in the form of free trade and investment agreements, have aided the globalization of markets and created a power shift from governments to corporations. As a result, the ability to use law to enable development and growth has flourished—but so too have economic inequality and climate change.

The challenge for all of us then, is to think not only about how we can improve our own work, but to think more broadly about how to improve the role that law plays

in our societies. In doing so, we need to reflect on and break down the barriers that limit the law's full potential in addressing today's needs. This report is the beginning of a broader conversation with a range of stakeholders who share our commitment to helping to defend and protect the public interest.

To frame this conversation, we are exploring a paradigm shift in the way we think and act. As we see it, law is not inevitably an instrument of the powerful and wealthy, nor just a useful tool for social change. It is a field of contest in which future outcomes are shaped.

From this perspective, we see a field that is divided between those on the public side who often rely on a limited range of specialized advocacy tools—ones that mainly use the human rights framework and strategic litigation—and those on the private side who generally do not see how their private practice of law may impact the public interest. As a result, the vast resource of legal expertise serving private interests is not being tapped for the public interest.

A further benefit of this paradigm shift is that it encourages a forward-looking rather than backward-looking perspective, one that can be used to focus on how law is being used to manage *risk*—to steer outcomes—rather than only to vindicate *rights*. Leaving aside the debate on the justiciability of economic, social, and cultural rights, we believe that a forward-looking risk management perspective can usefully harness the private practice expertise of corporate lawyers to advise poor or vulnerable clients on how best to ensure that their interests are fairly represented in transactions or development plans.

In exploring a different approach to how we think about and use law to protect the public interest, we realize that lawyers on both the public and private side of the profession will need to be engaged in ways that bridge differences in their perspectives, gaps in their knowledge, and barriers to their imagination of the possibilities of using law's potential. Ultimately, we see this as a discussion about how our use of law is contributing to inequality and how it might be used to advance equality instead.

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3. Rubinstein, *Litigation and Cooperation*., 230-231.
4. Cappelletti and Gordley, "Legal Aid: Modern Themes," 349.
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6. Huls, N, "From Pro Deo Practice to a Subsidized Welfare State Provision: Twenty-five Years of Providing Legal Services to the Poor in the Netherlands," *Maryland Journal of Contemporary Legal Issues* 5 (1994), 333.
7. Ibid.
8. Ibid.
9. Ibid. 352.
10. Brundage, "Legal Aid for the Poor," 174, 175.
11. Cappelletti and Gordley, "Legal Aid: Modern Themes," 353.
12. Brundage, "Legal Aid for the Poor," 175.
13. While it is true that the mid-to-late 19<sup>th</sup> century saw the emergence of legal aid legislation and even fully fledged national legal aid systems in France (1851), Italy (1865), and Germany (1877), these systems were more akin to a form of *pro bono* practice than they were to contemporary state-sponsored legal aid. In France, financial barriers to litigation for the poor were removed; unpaid lawyers were appointed to serve at no cost and court fees were waived. Similarly, in Italy, the legal profession was declared to be under a duty to provide legal aid at no cost and in Germany the Code of Civil Procedure of 1877 empowered judges to appoint lawyers and waive costs for litigants that could demonstrate their poverty. The crucial point is that providing legal services to those unable to afford them was still, first and foremost, a charitable duty of the profession in the 19<sup>th</sup> century. See Cappelletti and Gordley, "Legal Aid: Modern Themes," 356-358.
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27. Blankenburg and Cooper, "Survey of Literature," 281.


28. Incidentally, all of these organizations were subsequently dissolved in 1933-34 by the Nazi regime, and their functions were ostensibly absorbed by the "Rechtsfürsorge." See Blankenburg and Cooper, "Survey of Literature," 281.
29. League of Nations, *Legal Aid for the Poor*, V. Legal 1927, 413, 414.
30. Ibid, 423, 424, 439, 443, 451.
31. Law concerning the Organization and Unification of the Order of Advocates, August 29<sup>th</sup>, 1925. See League of Nations, *Legal Aid for the Poor*, V. Legal 1927, 209 – 211.
32. Ibid, 209-211.
33. Ibid, 430.
34. Ibid, 439, 443, 450.
35. Egerton, *Legal Aid*, 45; Cohn, "Legal Aid for the Poor," 258, 259.
36. Johnsen, Jon T, "Nordic Legal Aid," *Maryland Journal of Contemporary Legal Issues* Vol. 5, Issue 2 (1994), 304.
37. Cappelletti and Gordley, "Legal Aid: Modern Themes," 371.
38. Stone, Robert E. "Certain European Legal Aid Offices." *California Law Review* (1936), 62.
39. Cappelletti and Gordley, "Legal Aid: Modern Themes," 356, 374.
40. Blankenburg and Cooper, "Survey of Literature," 276.
41. Loi Du 3 Janvier 1972, No. 72, II, JO para.15.
42. Blankenburg and Cooper, "Survey of Literature," 286; Cousins, M, "Legal Aid Reform in France and the Republic of Ireland in the 1990s," in *Public Interest Law Initiative, Bulgarian Helsinki Committee, Polish Helsinki Foundation for Human Rights, INTERIGHTS, Access to Justice in Central and Eastern Europe: Source Book* (2003), 137, 138.
43. Cappelletti and Gordley, "Legal Aid: Modern Themes," 389, 390.
44. Ibid, 390.
45. Rekosh, E, K Buchko, and V Terzieva, "Access to Justice: Legal Aid for the Underrepresented," in *Public Interest Law Initiative, Bulgarian Helsinki Committee, Polish Helsinki Foundation for Human Rights, INTERIGHTS, Access to Justice in Central and Eastern Europe: Source Book* (2003), 5.
46. Interview number 50, 24 June 2016, and interview number 4, 25 September 2015. There were exceptions, of course. Post World War II was precisely the moment when lawyers began to represent political prisoners and other persons oppressed by institutions of the Communist state in Poland. See Latham & Watkins, "A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions," Prepared by Latham & Watkins LLP for the Pro Bono Institute (March 2016), 513.
47. Rekosh et al, "Access to Justice," 4.
48. Thieroff, M, and M Krutina. "Country Report: the Czech Republic." *Parker School Journal of East European Law* 5 (1998), 138-139; Rekosh et al, "Access to Justice," 10.
49. Thieroff and Krutina. "Country Report: the Czech Republic," 145; Bárd, K., and V. Terzieva. "Legal Services for Indigent Criminal Defendants in Central and Eastern Europe." *Parker School Journal of East European Law* 5 (1998), 238 – 239; Macovei, Monica. "Country Report: Romania." *Parker School Journal of East European Law* 5 (1998), 204.
50. Macovei, "Country Report: Romania," 199.
51. Thieroff and Krutina, "Country Report: the Czech Republic," 145; Bárd and Terzieva. "Legal Services for Indigent Criminal Defendants," 238–239; Macovei, "Country Report: Romania," 204. Although note that Poland seems to have been somewhat of an exception here, see Rekosh et al, "Access to Justice," 7-9.
52. 2<sup>nd</sup> Access to Justice in Central and Eastern Europe, European Forum on Access to Justice, Organized by the Public Interest Law Initiative in collaboration with the Open Society Justice Initiative, 24-26 February 2005, Budapest, Hungary, Forum Report; Slovakia: Act No 327/2005 on the provision of legal aid to persons in material need (the Legal Aid Act); Latvia: Act on State Legal Aid, Cabinet Regulation No 920 of 6 November 2006 on forms of legal aid; Georgia: Law of Georgia on Legal Aid No 4955, 2 July 2007; Moldova: Law no 198-XVI of 26 July 2007 on State Guaranteed Legal Aid; and Ukraine: Law No. 3460-VI of 2 June 2011 Free Civil Legal Aid.

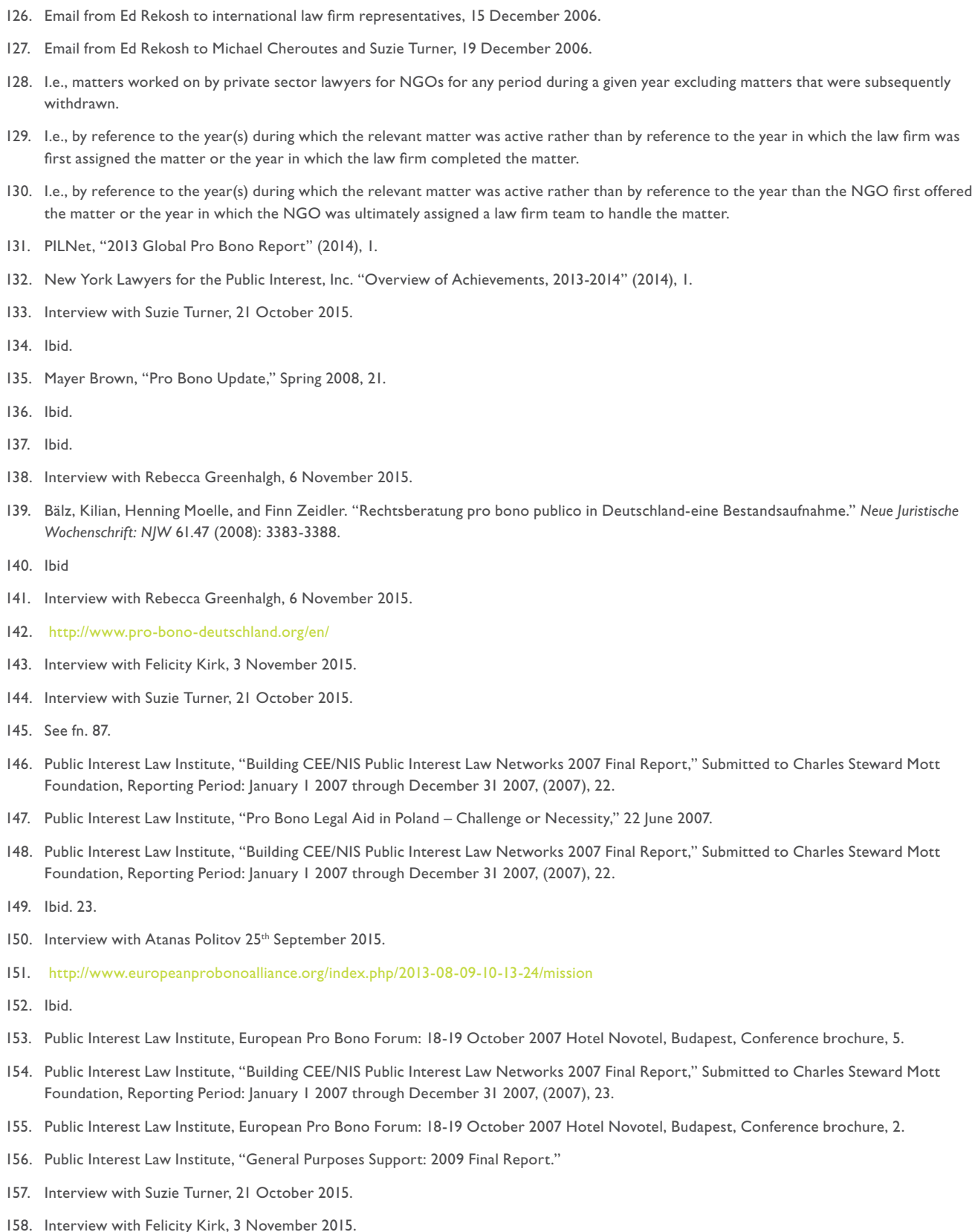
53. Cappelletti and Gordley, "Legal Aid: Modern Themes," 379.
54. Commencing in 1965 in the United States with the establishment of the Legal Services Program of the Office of Economic Opportunity.
55. Gibens, Steven, and Bernard Hubeau. "Socially Responsible Legal Aid in Belgian Society: Time for a Thorough Rethink?" *International Journal of the Legal Profession* 20, no. 1 (2013): 67-86; Gibens, Steve, and Jean Van Houtte. "Towards a More Effective Legal Aid: The Belgian Case in Comparative Perspective," *Sociologia Del Diritto* (2011).
56. Rechtswinkels were established throughout the Netherlands starting at the University of Tilburg in 1969. Wetswinkels and boutiques de droit were established throughout Belgium starting in 1972 in Ghent and Louvain. Meanwhile, in Norway, the Juss-Buss was launched at the University of Oslo in 1971, literally bussing law students out to the suburbs of Oslo to provide free legal advice. See Garth, Bryant G. "Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession," *BRILL* (1980), 118-129; and unpublished 2011 article on the origins of the Juss-Buss written by Jon T Johnsen on file with author.
57. Garth, "Neighborhood Law Firms for the Poor," *BRILL* (1980), 52-63; Gibens, Steven, "Legal Aid in Belgium: The Absence of a Tradition?" *International Journal of the Legal Profession* 13.1 (2006): 3-18.
58. Boon, Andrew, and Avis Whyte. "Charity and Beating Begins at Home": The Aetiology of the New Culture of Pro Bono Publico." *Legal Ethics* 2.2 (1999), 176, fn 44.
59. Regan, Francis. "Legal Aid Without the State: Assessing the Rise of Pro Bono Schemes." *U. Brit. Colum. L. Rev.* 33 (1999): 383.
60. Ibid, 383; Regan, Francis, and Don Fleming, "International Perspectives on Legal Aid." *Alternative LJ* 19 (1994): 183; Van Emmerik, Michiel L., Alex Brenninkmeijer, and Tom Barkhuysen. "Access to Justice as a Fundamental Right in the Dutch Legal Order." Netherlands Reports to the Fifteenth International Congress of Comparative Law. 1998, 397; Regan, Francis. "Retreat from Equal Justice? Assessing the Recent Swedish Legal Aid and Family Law Reforms." *Civil Justice Quarterly* 19 (2000): 168-184; Yuille, Lua Kamtl. "No One's Perfect (Not Even Close): Reevaluating Access to Justice in the United States and Western Europe," *Columbia Journal of Transnational Law* 42 (2004), 892, 893; CoE Commissioner, "Safeguarding Human Rights in Times of Economic Crisis" issue paper, December 2013, 22, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>; The Guardian, "Legal Aid Cuts: The Forgotten Pillar of the Welfare State – A Special Report", September 2014, available at: <http://www.theguardian.com/law/2014/sep/25/-sp-legal-aid-forgotten-pillar-welfare-state-special-report-impactcuts>; Tamamović, Aleksandra I., "The Impact of the Crisis on Fundamental Rights across Member States of the EU: Comparative analysis, Study of the LIBE Committee of the European Parliament" (2015), 99, 100.
61. For a comparison of European legal aid spending in the early 1990s, see Cooper, Jeremy, "English Legal Services: A Tale of Diminishing Returns," *Maryland Journal of Contemporary Legal Issues* Vol. 5, Issue 2 (1994), 254, Table 1.
62. Tamamović, Aleksandra I., "The Impact of the Crisis on Fundamental Rights," 105, 106.
63. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
64. Boutcher, Steven Allen, "The Institutionalization of Pro Bono Publico in Large Law Firms: An Analysis of the Causes and Consequences of Large Firm Pro Bono Programs," Dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Philosophy in Sociology (2010), 19.
65. Prior to this, there was some degree of organized charitable legal aid in the form of "legal aid societies." Legal aid societies were charities funded by private sources and staffed by full-time legal aid lawyers to provide civil legal assistance to those who could not otherwise afford a lawyer. Between 1876 and 1946, some 70 legal aid societies were established across the United States. However, despite their growth, by 1963 it was estimated that only 400 legal aid lawyers were available to assist a pool of 50 million potential clients. See Ibid, 21.
66. The public interest law movement was a "court-centred and litigation-based" US domestic liberal legal advocacy movement institutionalized in the 1960s and 1970s. It is epitomized by the work of the NAACP Legal Defense Fund campaign for desegregated education and later by the likes of Ralph Nader.
67. It is well documented that the movement was largely spearheaded and constructed by a group of private foundations (especially the Ford Foundation, which played a huge role) and elite lawyers. Foundations chiefly operated by allocating grants to purpose-built or sometimes pre-existing NGOs (the "public interest law firms") whose task would be to carry out public interest law advocacy in relation to a narrowly defined set of issues. For example, foundations were involved in sponsoring or setting up: Lawyers Committee for Civil Rights Under Law; Mexican-American Legal Defense and Education Fund; NAACP/LDF; National Committee Against Discrimination in Housing; Native American Rights Fund; Women's Law Fund; Women's Rights Project; Natural Resources Defense Council; Environmental Defense Fund; Institute for Public Interest Representation; Sierra Club Legal Defense Fund and many more. See Council for Public Interest Law, "Balancing the Scales of Justice" (1976): 81-82; Weisbrod, Handler, and Komesar, *Public Interest Law*; Trubek, "Public Interest Law: Facing the Problems of Maturity," 418; Trubek, "Crossing Boundaries," 457-460; and Roelofs, "Foundations and Collaboration," 487.
68. Boutcher, "Institutionalization of Pro Bono Publico," 22.

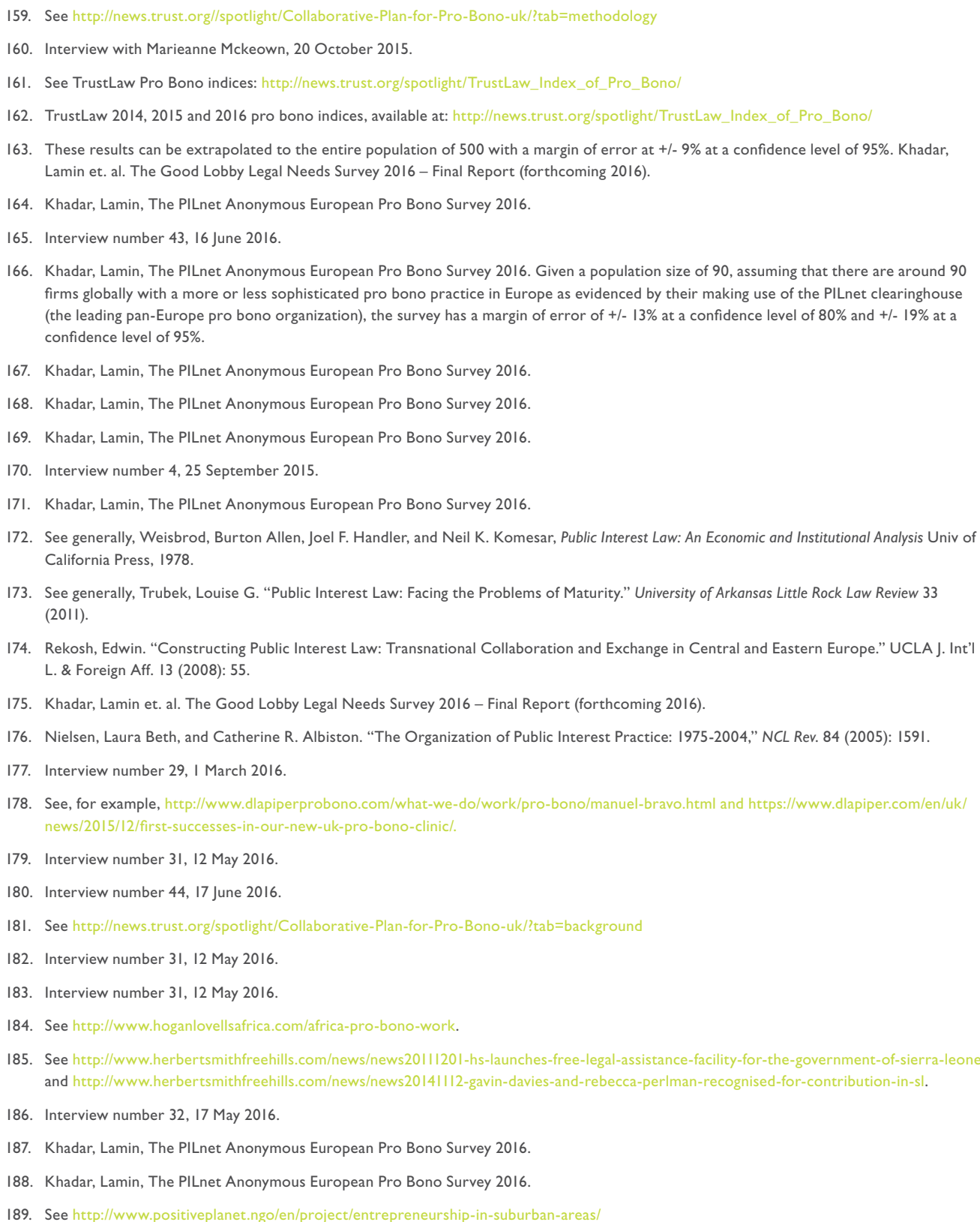




69. Ibid. 22–23.
70. Cummings, S, “The Politics of Pro Bono,” *UCLA Law Review* 52.1 (2004), 36.
71. Handler, Joel F., Ellen Jane Hollingsworth, and Howard S. Erlanger. *Lawyers and the Pursuit of Legal Rights*, New York: Academic Press (1978), 123.
72. Ibid. 3.
73. Quoted in Boutcher, “Institutionalization of Pro Bono Publico,” 24.
74. Ibid.
75. Cummings, “Politics of Pro Bono,” 19–33.
76. Ibid. 32–39.
77. Ibid. 52.
78. Boutcher, “Institutionalization of Pro Bono Publico,” 31.
79. Ibid. 32.
80. *American Lawyer* as quoted in, Boutcher, “Institutionalization of Pro Bono Publico,” 35–36.
81. *American Lawyer* as quoted in, Boutcher, “Institutionalization of Pro Bono Publico,” 39.
82. Critics suggested that public service was a guiding principle of the legal profession and was being neglected. Boon, Andrew, and Avis Whyte. “Charity and Beating Begins at Home”: The Aetiology of the New Culture of Pro Bono Publico.” *Legal Ethics* 2.2 (1999), 176.
83. The report that flowed from the conference unambiguously concluded that the state-sponsored legal aid scheme “represented an acknowledgment by the state that primary responsibility for ensuring access to justice for all lies with the Government, not with the profession.” Ibid.
84. Boon and Whyte, “Charity and Beating,” 177.
85. In 1994 Labour’s legal affairs spokesman complained that there was “a section of the legal profession that makes no contribution at all, apart from direct taxation, to the traditional duty and responsibility of lawyers as a profession to the proper and equitable administration of justice.” Ibid. 181
86. Boon and Whyte, “Charity and Beating,” 180.
87. Phillips was by then the head of the Business in the Community (BITC) Professional Firms Group. BITC is a British business-community outreach charity promoting responsible business, CSR, corporate responsibility, and is one of the Prince’s Charities of the Prince of Wales.
88. Boon and Whyte, “Charity and Beating,” 183.
89. The Lawyer, “Who is Behind Pro Bono?: As the Director of the Solicitor’s Pro Bono Group Resigns, Matheu Swallow Asks Where the Group Goes From Here,” September 27 (1999), 14.
90. Boon and Whyte, “Charity and Beating,” 187.
91. Boon and Whyte, “Charity and Beating,” 188.
92. The Law Society, “The Pro Bono Work of Solicitors: Findings from Omnibus Survey Nine 2002,” Prepared by the Strategic Research Unit (2002), 5; and The Law Society, “The Pro Bono Work of Solicitors: PC Holder Survey 2014,” (2014), 5.
93. The Lawyer, “Pro Bono Work Flourishes in Spite of Economic Downturn,” November 9 (2009), 56.
94. This of course says nothing about pro bono practice in other segments of the profession such as sole practitioners and small- and medium-sized firms, which also have demonstrated a significant commitment to pro bono practice in both the US and the UK.
95. Cummings, “The Politics of Pro Bono,” 35.
96. Ibid.
97. Lee, Robert G. “From Profession to Business: The Rise and Rise of the City Law Firm.” *Journal of Law and Society* 19.1 (1992), 33.
98. A Guide to the Legal Profession, 1996-1997 (Chamber & Partners’ Directory, 1997), 11

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99. Faulconbridge, J, J Beaverstock, D Muzio, and P Taylor, "Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work," *North Western Journal of International Law & Business*, 28:3 (2007-2008), 459; See also Beverstock, J et. al., "The Long Arm of the Law: London's Law Firms in a Globalising World Economy," *Environment and Planning A* 31 (1999); and Bauman, J, *Pioneering a Global Vision: The Story of Baker & McKenzie*, Gilberts Law Summaries, (1999).
  100. Ibid. 460.
  101. Goldhaber, M, "A World of Good", *American Lawyer*. 34:7 (2012).
  102. Interview with Suzie Turner, 21 October 2015.
  103. Interview with Atanas Politov 25<sup>th</sup> September 2015.
  104. Interview with Suzie Turner, 21 October 2015.
  105. It must be noted here that, with the high concentration of English and American law firms in London, it was unsurprisingly England that led the way with pro bono development in Europe. As mentioned above, in 1997 the SPBG (now LawWorks) and the Bar Pro Bono Unit were formed. These organizations established, in Britain, a real structure to the provision of free legal services by members of the private legal profession. They began to organize and support an institutionalized system for delivering free legal services. PILnet followed in the footsteps of these English organizations, but embraced a much broader mandate.
  106. Public Interest Law Initiative in Russia and Eastern Europe, "A Proposal Submitted to the Ford Foundation by Columbia Law School," July (1997), 1.
  107. Achieving sustainable and long-term change in Poland, where clinical legal education is now institutionalized across the country.
  108. Working with a coalition of organizations and actors including the Open Society, PILnet was able to secure big changes to the legal aid regimes of Lithuania, Hungary, Bulgaria and Latvia. See 2<sup>nd</sup> Access to Justice in Central and Eastern Europe, European Forum on Access to Justice, Organized by the Public Interest Law Initiative in collaboration with the Open Society Justice Initiative, 24 – 26 February 2005, Budapest, Hungary, Forum Report, I, 12, 13.
  109. Interview with Ed Rekosh, 7 October 2015.
  110. CV of Edwin B. Rekosh, 1997.
  111. Interview with Suzie Turner, 21 October 2015.
  112. Interview with Ed Rekosh, 7 October 2015.
  113. Ibid.
  114. Ibid.
  115. Public Interest Law Initiative, Columbia University Budapest Law Center, Central European Pro Bono Initiative, June (2005).
  116. Email from Ed Rekosh to Miriam Buhl, August 4, 2005.
  117. PILnet attempted to launch a Polish pro bono initiative in 2002 with the Legal Clinics Foundation in Warsaw. The initiative sought to match Polish firms with Polish university law clinics. A number of meetings were held, including one in May 2003, with firms and the Polish bar to explore pro bono in Poland. Few law firm representatives attended the meeting, and ultimately the initiative did not succeed due to limited firm buy-in. Nevertheless, it did result in the establishment of the now well-regarded Polish Lawyer Pro Bono Award and several years later, in the establishment of the now very successful Centrum Pro Bono (Polish Clearinghouse).
  118. Public Interest Law Institute, "Building CEE/NIS Public Interest Law Networks 2007 Final Report," Submitted to Charles Steward Mott Foundation, Reporting Period: January 1 2007 through December 31 2007, (2007), 21.
  119. Clifford Chance, Hogan & Hartson, Latham & Watkins, and Weil, Gotshal & Manges, Public Interest Law Initiative, "Proposal for Institutional Support," Submitted to the Ford Foundation, Grant Period: January 1 2007 to December 31 2008, (2006), 8.
  120. PILnet, "PILnet Finance and Development Report," PILnet fundraising history (2015).
  121. Interview with Tamás Barabás June 24 2016.
  122. Public Interest Law Initiative, "Hungarian Lawyers' Role in Advancing the Public Good (*Pro Bono Publico*)," (2006).
  123. For example, in Poland and Czech Republic.
  124. Email from Ed Rekosh to Michael Cheroutes and Suzie Turner, 19 December 2006.
  125. Email from Atanas Politov to international law firm representatives, 17 November 2006.

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126. Email from Ed Rekosh to international law firm representatives, 15 December 2006.
127. Email from Ed Rekosh to Michael Cheroutes and Suzie Turner, 19 December 2006.
128. I.e., matters worked on by private sector lawyers for NGOs for any period during a given year excluding matters that were subsequently withdrawn.
129. I.e., by reference to the year(s) during which the relevant matter was active rather than by reference to the year in which the law firm was first assigned the matter or the year in which the law firm completed the matter.
130. I.e., by reference to the year(s) during which the relevant matter was active rather than by reference to the year than the NGO first offered the matter or the year in which the NGO was ultimately assigned a law firm team to handle the matter.
131. PILNet, “2013 Global Pro Bono Report” (2014), 1.
132. New York Lawyers for the Public Interest, Inc. “Overview of Achievements, 2013-2014” (2014), 1.
133. Interview with Suzie Turner, 21 October 2015.
134. Ibid.
135. Mayer Brown, “Pro Bono Update,” Spring 2008, 21.
136. Ibid.
137. Ibid.
138. Interview with Rebecca Greenhalgh, 6 November 2015.
139. Bälz, Kilian, Henning Moelle, and Finn Zeidler. “Rechtsberatung pro bono publico in Deutschland-eine Bestandsaufnahme.” *Neue Juristische Wochenschrift: NJW* 61.47 (2008): 3383-3388.
140. Ibid.
141. Interview with Rebecca Greenhalgh, 6 November 2015.
142. <http://www.pro-bono-deutschland.org/en/>
143. Interview with Felicity Kirk, 3 November 2015.
144. Interview with Suzie Turner, 21 October 2015.
145. See fn. 87.
146. Public Interest Law Institute, “Building CEE/NIS Public Interest Law Networks 2007 Final Report,” Submitted to Charles Steward Mott Foundation, Reporting Period: January 1 2007 through December 31 2007, (2007), 22.
147. Public Interest Law Institute, “Pro Bono Legal Aid in Poland – Challenge or Necessity,” 22 June 2007.
148. Public Interest Law Institute, “Building CEE/NIS Public Interest Law Networks 2007 Final Report,” Submitted to Charles Steward Mott Foundation, Reporting Period: January 1 2007 through December 31 2007, (2007), 22.
149. Ibid. 23.
150. Interview with Atanas Politov 25<sup>th</sup> September 2015.
151. <http://www.europeanprobonoalliance.org/index.php/2013-08-09-10-13-24/mission>
152. Ibid.
153. Public Interest Law Institute, European Pro Bono Forum: 18-19 October 2007 Hotel Novotel, Budapest, Conference brochure, 5.
154. Public Interest Law Institute, “Building CEE/NIS Public Interest Law Networks 2007 Final Report,” Submitted to Charles Steward Mott Foundation, Reporting Period: January 1 2007 through December 31 2007, (2007), 23.
155. Public Interest Law Institute, European Pro Bono Forum: 18-19 October 2007 Hotel Novotel, Budapest, Conference brochure, 2.
156. Public Interest Law Institute, “General Purposes Support: 2009 Final Report.”
157. Interview with Suzie Turner, 21 October 2015.
158. Interview with Felicity Kirk, 3 November 2015.

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159. See <http://news.trust.org/spotlight/Collaborative-Plan-for-Pro-Bono-uk/?tab=methodology>
160. Interview with Marieanne Mckeown, 20 October 2015.
161. See TrustLaw Pro Bono indices: [http://news.trust.org/spotlight/TrustLaw\\_Index\\_of\\_Pro\\_Bono/](http://news.trust.org/spotlight/TrustLaw_Index_of_Pro_Bono/)
162. TrustLaw 2014, 2015 and 2016 pro bono indices, available at: [http://news.trust.org/spotlight/TrustLaw\\_Index\\_of\\_Pro\\_Bono/](http://news.trust.org/spotlight/TrustLaw_Index_of_Pro_Bono/)
163. These results can be extrapolated to the entire population of 500 with a margin of error at +/- 9% at a confidence level of 95%. Khadar, Lamin et. al. The Good Lobby Legal Needs Survey 2016 – Final Report (forthcoming 2016).
164. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
165. Interview number 43, 16 June 2016.
166. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016. Given a population size of 90, assuming that there are around 90 firms globally with a more or less sophisticated pro bono practice in Europe as evidenced by their making use of the PILnet clearinghouse (the leading pan-Europe pro bono organization), the survey has a margin of error of +/- 13% at a confidence level of 80% and +/- 19% at a confidence level of 95%.
167. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
168. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
169. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
170. Interview number 4, 25 September 2015.
171. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
172. See generally, Weisbrod, Burton Allen, Joel F. Handler, and Neil K. Komesar, *Public Interest Law: An Economic and Institutional Analysis* Univ of California Press, 1978.
173. See generally, Trubek, Louise G. "Public Interest Law: Facing the Problems of Maturity." *University of Arkansas Little Rock Law Review* 33 (2011).
174. Rekosh, Edwin. "Constructing Public Interest Law: Transnational Collaboration and Exchange in Central and Eastern Europe." *UCLA J. Int'l L. & Foreign Aff.* 13 (2008): 55.
175. Khadar, Lamin et. al. The Good Lobby Legal Needs Survey 2016 – Final Report (forthcoming 2016).
176. Nielsen, Laura Beth, and Catherine R. Albiston. "The Organization of Public Interest Practice: 1975-2004," *NCL Rev.* 84 (2005): 1591.
177. Interview number 29, 1 March 2016.
178. See, for example, <http://www.dlapiperprobono.com/what-we-do/work/pro-bono/manuel-bravo.html> and <https://www.dlapiper.com/en/uk/news/2015/12/first-successes-in-our-new-uk-pro-bono-clinic/>.
179. Interview number 31, 12 May 2016.
180. Interview number 44, 17 June 2016.
181. See <http://news.trust.org/spotlight/Collaborative-Plan-for-Pro-Bono-uk/?tab=background>
182. Interview number 31, 12 May 2016.
183. Interview number 31, 12 May 2016.
184. See <http://www.hoganlovellsafrica.com/africa-pro-bono-work>.
185. See <http://www.herbertysmithfreehills.com/news/news20111201-hs-launches-free-legal-assistance-facility-for-the-government-of-sierra-leone> and <http://www.herbertysmithfreehills.com/news/news20141112-gavin-davies-and-rebecca-perlman-recognised-for-contribution-in-sl>.
186. Interview number 32, 17 May 2016.
187. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
188. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
189. See <http://www.positiveplanet.ngo/en/project/entrepreneurship-in-suburban-areas/>



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190. Interview 43, 16 June 2016.
191. Interview 43, 16 June 2016.
192. Khadar, Lamin et. al. The Good Lobby Legal Needs Survey 2016 – Final Report (forthcoming 2016).
193. Interviews number 36 (13 June 2016) and 47 (22 June 2016).
194. Beria, Londa, “Constitutional Court in Georgia lifts ban on homosexuals giving blood,” Democracy & Freedom Watch, Tuesday 19 July 2014.  
See: <http://dfwatch.net/constitutional-court-in-georgia-lifts-ban-on-homosexuals-giving-blood-10117-26435>
195. Interview number 48, 23 June 2016.
196. Interview number 36, 13 June 2016.
197. Interview number 45, 21 June 2016.
198. Interview number 47, 22 June 2016.
199. Interview number 48, 23 June 2016.
200. Interview number 45, 21 June 2016.
201. Interview number 36, 13 June 2016.
202. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
203. Interview number 32, 17 May 2016.
204. Interview number 31, 12 May 2016.
205. Interview number 30, 25 March 2016.
206. Interview number 39, 14 June 2016.
207. Interview number 48, 23 June 2016.
208. Interview number 48, 23 June 2016.
209. Interview number 30, 25 March 2016.
210. Interview number 39, 14 June 2016.
211. See <http://news.trust.org/spotlight/Collaborative-Plan-for-Pro-Bono-uk/?tab=background>
212. See <http://news.trust.org/spotlight/Collaborative-Plan-for-Pro-Bono-uk/?tab=background>
213. Khadar, Lamin et. al. The Good Lobby Legal Needs Survey 2016 – Final Report (forthcoming 2016).
214. Khadar, Lamin et. al. The Good Lobby Legal Needs Survey 2016 – Final Report (forthcoming 2016).
215. The pro bono coordinator for Austrian firm Schoenherr is also a full-time PR and marketing manager.
216. See <https://www.apbco.org/about/membership/>
217. Interview number 13, 5 October 2015.
218. Interview 43, 16 June 2016.
219. Interview number 33, 17 May 2016.
220. Interview number 44, 17 June 2016.
221. Interview number 44, 17 June 2016.
222. Khadar, Lamin, The PILnet Anonymous European Pro Bono Survey 2016.
223. Interview number 30, 25 March 2016.
224. Interview number 4, 25 September 2015.
225. Interview number 39, 14 June 2016.
226. Interview number 48, 23 June 2016.



- 227. Interview number 39, 14 June 2016.
- 228. Interview number 39, 14 June 2016.
- 229. Interview number 4, 25 September 2015.
- 230. PILnet, TrustLaw, PBI, A4ID, Centrum Pro Bono, PILA, AAHD, Proboneo and Civil Society Development Foundation.
- 231. Interview number 50, 24 June 2016.
- 232. Interview number 32, 17 May 2016.
- 233. Interview number 49, 23 June 2016.
- 234. Interview number 38, 14 June 2016.
- 235. Interview number 41, 15 June 2016 and interview number 42, 16 June 2016.
- 236. Interview number 4, 25 September 2015.
- 237. Interview number 50, 24 June 2016.
- 238. Interview number 49, 23 June 2016.
- 239. Interview number 34, 30 May 2016.
- 240. Interview number 38, 14 June 2016.
- 241. Interview number 29, 1 March 2016.
- 242. Interview number 50, 24 June 2016.
- 243. Interview number 4, 25 September 2015.
- 244. Interview number 50, 24 June 2016.
- 245. Interview number 50, 24 June 2016.
- 246. Interview number 50, 24 June 2016.
- 247. Interview number 50, 24 June 2016.
- 248. See <https://www.theguardian.com/world/2012/jan/27/hungary-roma-living-in-fear>
- 249. See <http://actedo.org/the-pro-bono-network-for-human-rights/>
- 250. Interview number 28, 8 February 2016.
- 251. PFC Social Impact Advisors, Oxford Impact Investing Programme, Saïd Business School, University of Oxford, Thomson Reuters, “The Case Study of TrustLaw: How the Thomson Reuters Foundation Built the World’s Largest Pro Bono Legal Network to Serve the Poor,” (2014), 10 – 13.
- 252. PFC Social Impact Advisors, Oxford Impact Investing Programme, Saïd Business School, University of Oxford, Thomson Reuters, “The Case Study of TrustLaw: How the Thomson Reuters Foundation Built the World’s Largest Pro Bono Legal Network to Serve the Poor,” (2014), 13.
- 253. Interview number 49, 23 June 2016.
- 254. Discussion with Alberto Alemanno and Lamin Khadar, co-founders of The Good Lobby.
- 255. Interview number 24, 14 December 2015.
- 256. Interview number 23, 2 December 2015.
- 257. See <http://www.islp.org/content/research-reports>
- 258. Interview number 2, 18 September 2015.
- 259. See e.g. <http://www.pila.ie/resources/case-studies/housing-policy-working-group-collective-complaint/>
- 260. See <http://www.pila.ie/resources/case-studies.html>



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