

Legal Clinic as a Promising Alternative Instrument in Hungary

Abstract

Accession to the justice belongs to the social justice and equality in substance. Due to the growing differences in incomes and high risk of deprivation for more and more persons in Hungary the legal services cannot be operated only on the grounds of business. The state-finances legal assistance cannot cover all persons in need thus supplemental instruments developed by the ombudsman, trade unions, NGOs, universities and pro bono professional work of legal representatives are required. This article describes how the legal clinical programs have (not) been introduced in Hungary in particular in the curricula at the University of Szeged. The author intends to explain why the alternative teaching method and supplementary legal services for segregated persons would become gradually a promising instrument of social solidarity and professional ethics in Hungary.

1. Introduction

Due to the growing differences in incomes and high risk of deprivation for more and more persons in Hungary the legal services cannot be operated only on the grounds of business. While the rate of the population at risk of poverty or social exclusion was 24 percent in average of the EU28 it was 31 percent in Hungary. The risk level is higher for minors (41.4 percent from the age 0-17) and persons in active age (31.5 percent from the age 18-64) than for elderly (18.1 percent over 65).

Table 1: Social exclusion in Hungary (2014)

EUROSTAT data (2014)		In Hungary	EU28 in average
Income poverty of the population	At risk of poverty before social transfer	26.3%	26.1%
	At risk of poverty after social transfer	14.6%	17.2%
	At risk of poverty threshold (yearly income per capita)	812 000 HUF (but the lawful minimal net-wage was only 797 796 HUF)	
Low work intensity of the households (under 60)		13%	11%
Material deprivation of the population (4 parameters from the 9 are fitting to the strata of the population)	e.g. who cannot afford to manage one week's annual holiday away from home or to buy a washing machine or a car	24%	9%

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Table 1 proves that redistribution policy is relevant in moderation of the inequalities in the income, while the rate of the population facing material deprivation is much higher than in other European countries. Since the economic recession in 2009 the alternative legal services for persons in need and in the periphery have become dominant for at least one third of the population. The employed poor can earn less money per capita than the threshold of material deprivation because the lawful minimal net salary level has been artificially low.

The inequality is multilevel including health care, accession to education, housing or justice. The country experienced significant spike in poverty and household inequalities after the political changes of 1989-90. Since then its rate of inequality has remained around the European average but statistics obscure in many important facts. Particularly after the financial crisis of 2008-2009 certain aspects of inequality has been covered because the poorer part of the society had to repay of debt a high rate from their income. Moreover, inequality in the country also has ethnic dimension. A large portion of the poorest people is Roma in Hungary. According to expert estimations the unemployment rate for Roma was 50 percent compared to 12-20 percent for non-Roma.² The data reveal that 71 percent of Roma live in relative poverty – defined as under 60 percent of median income - compared to 33 percent of non-Roma.³

Albeit the social responsibility of law practitioners working pro bono for poor, segregated and fragile groups are only in germ in Hungary, the legal education is reluctant to inspire the forthcoming law practitioners' generation on inclusion of these persons to the legal or judicial services. The discrimination and non-accession to social, cultural and health services are accompanied with low family incomes; one fourth of employed workers (1 million persons) have the monthly wage below the officially published amount of minimal living costs.⁴

II. On free legal aid in Hungary

Hungary did choose the model of dualism – from the various European ones – in free legal aid: there is a state authority that decides on eligibility of applicants for free/supported legal counseling, and the requested legal service is provided by the selected non-state, private practitioners (attorney-at-law, legal teachers and professionals of NGOs) whose names are putting to the list of service suppliers. The applicant or the proceeding authority may select (designate) a name from the list. The tariff of designated legal representative/consultant is fixed in a ministerial decree (for instance, in 2015 it means 5000 HUF – about 16 EUR - per hour). Moreover, the Hungarian Bar of Associations has to up-to-date the list of attorneys-at-law for designation that shall be put on its homepage⁵. For this disproportional honorarium of law practitioners in comparison to being on their permanent standby and the existing specialization of lawyers put together the limited efficiency of designated legal representation.

In this context the law students shall be prepared to this low-paid and professionally required work for persons in need or clients without proper resources. How is the legal teaching able to play a progressive role in a polarized, intolerant and partly democratized society?

Since 2010 the budget cut and austerities in tertiary education in particular in humanities and social sciences are ripening discussions on substantial and institutional frame of legal education in Hungary. The democratic changes after 1989 opened the gate for establishment of new faculties upgrading the number of law students. Today there are eight faculties of legal studies at divergent

² John Feffer: Focusing on inequalities in Hungary. HUFF Post,01/08/2014

³ Kopasz, Mariann et al, GINI - Growing inequality and its impacts in Hungary. Country report for Hungary. Jan 2013, pp.130

⁴ The Central Statistical Office: the monthly minimum income for living in Hungary was 87 510 HUF (MTI, June 2010, 2014) while the lawfully defined minimal monthly wage (in the Government Decree) at the time was 66 500 HUF. (Index, Stubnya Bence: Egymillió magyar a létminimum alatt keres, 31 March, 2015)

⁵ On attorney-at-law and on Bar of Associations, Act XI of 1998, Art 31-35

level but following the traditions. Do we need so many faculties building up a rule-of-law? Does the education rely on the labor market demands or the student claims? Does the unemployment of lawyers exist in fact or only in the rhetoric of the governmental restrictions? How can we change the methods in a self-sufficient tertiary education as the public finance policy requires? Searching the answers we have to take into account the break in democratic development and rule of law principle in recent years. The rapid legislation (in average, 140 acts (or maybe more are passed yearly) makes instable the whole legal system eroding the efficiency, confidence and predictability of law. We witness how the law making becomes a mere technical instrument in the hand of governing power. This instrumentalization is connected to the limited autonomy of lawyers and authoritarian traditions also in legal education.

The legal counseling for non-business basis was changed during the preparatory period of the accession to the European Union. The existing state-financed designated legal representative in criminal cases and certain procedures without fee was reformulated in 2003-2004 but not for poor people but transposing the European legal norms. The following provisions were passed:

- Act LXXX of 2003 on legal assistance rendering free legal counseling and representation for persons that are unable to pay the honoraria;
- Decree of the Minister of Justice No.42 of 2003 on keeping the list of facilitators in legal assistance;
- Decree of the Minister of Justice No.11 of 2004 on tariff for facilitators in legal assistance paid by the state;
- Decree of the Minister of Justice and Law-enforcement No.56 of 2007 on accession to the legal assistance;
- Decree of the Minister of Justice No. 7 of 2002 on applicable costs by the facilitators in criminal and civil law suits;
- Decree of the Minister of Justice No.32 of 2003 on applicable costs by the attorney-at-law in justice.

The free legal assistance was gradually opened, it was available in non-litigation, preparatory procedures in 2004-2008 and the representation in justice was provided for people in need after 2008. Although yearly the number of clients was slowly increasing, independent surveys or monitoring reports on demands of people in social need and the level of their satisfaction how to access to this service and how to assess the quality of the assistance have never made. The re-named Service of Justice (Office of Justice) was recently re-shaped in October 2014.⁶ Accordingly, the Table 2 indicates the main components of free legal aid inside this authority.

Table 2: Accession to the legal assistance services through the Service/Office of Justice

Eligibility regardless his/her financial situation	Eligibility for persons in need	Application	Responsible authority
1.) General legal information and counselling (e.g. on the competence of each authority, police or court)			
No special requirement		In person or by phone, e-mail or posted letter to the Service	County/capital unit of the Service of Justice (inserted into the governmental office)
2.) Trans-border legal counselling (on the grounds of the Dir. 2003/8/EC and Dir. 2009/4/EC)			
Hungarian citizen if s/he intends to be informed on how to practice rights in justice in another member state (e.g.	Union national	In person or by phone, e-mail or posted letter to the Service	At first instance decision: County/capital unit of the Service of Justice (inserted into the governmental office)

⁶ <http://igazsagugyihivatal.gov.hu/jogi-segitsegnyujtas>

accession to legal representative, fee deduction, legal assistance)			2nd instance means decision on appeal: Office of Justice
3.) Assistance in extra-judicial cases (e.g. counselling in nuisance, housing, pension, employment or public utilities disputes)			
Tariff of legal expert is paid by the state budget if applicant is a municipally financed chronic patient, homeless person accommodated in a public shelter, a recognised refugee or an applicant for asylum, visa, residence permission, or applicant under expulsion order, or s/he is an applicant for preferential naturalisation, or an applicant in child protection system, or exceptionally if the applicant was under the child protection system (e.g. s/he needs legal assistance in purchase of real estate as a first home)	Tariff of the legal expert is paid by the state budget if the monthly income in the family/household of the applicant does not exceed the lawful minimal pension per capita (e.g. in 2014 it was 95 EUR) or the applicant's personal monthly income living alone does not exceed the 150 percent of the lawful minimal pension (e.g. in 2014 it was 143 EUR), or s/he is a victim of a criminal case and his/her monthly income does not exceed 86 percent of the national average (e.g. in 2014 it was 640 EUR). The tariff of the legal representative shall be reimbursed within one year if the applicant's personal monthly income does not exceed the 43 percent of the national average (e.g. it was 320 EUR)	In person she/he has to submit the formal attaching the required evidences and documents (e.g. on incomes, ongoing investigation of the criminal case). The legal assistance' period is maximized by the Office, and the applicant has to select a name from the list of legal experts but defender in criminal case shall be designated by the investigation authority.	At first instance decision: County/capital unit of the Service of Justice (inserted into the governmental office) 2nd instance means decision on appeal: Office of Justice
4.) Assistance in civil and criminal judicial cases			
Tariff of the legal expert is paid by the state budget if applicant or his/her family member is supported with social allowances, or s/he is a municipally financed chronic patient, a homeless person accommodated in a public shelter, a recognised refugee or an applicant for asylum, visa, residence permission, or applicant under expulsion order, or s/he is an applicant for preferential naturalisation, or an applicant or his/her child is under the child protection system	Tariff of the legal expert is paid by the state budget if the monthly income in the family/household of the applicant does not exceed the lawful minimal pension per capita (e.g. in 2014 it was 95 EUR), or the applicant's personal monthly income living alone does not exceed the 150 percent of the lawful minimal pension (e.g. in 2014 it was 143 EUR), or s/he is involved into a duty-free procedure or his duty-free position is determined by the court. Tariff of the legal representative shall be reimbursed within one	In person she/he has to submit the formal attaching the required evidences and documents (e.g. on incomes, ongoing investigation of the criminal case). The legal assistance' period is maximized by the Office, and the applicant has to select a name from the list of legal experts but defender in criminal case shall be designated by the investigation authority.	At first instance decision: County/capital unit of the Service of Justice (inserted into the governmental office) 2nd instance means decision on appeal: Office of Justice

	<p>year if the applicant's personal monthly income does not exceed the 43 percent of the national average (e.g. it was 320 EUR), or s/he is a victim of a criminal case and his/her monthly income does not exceed 86 percent of the national average (e.g. in 2014 it was 640 EUR), or s/he is involved into a procedure in which fee is paid only at the end of the procedure.</p>		
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The reform of this system has been urged for years in order to establish the guarantees to the fair procedure in justice. For instance, 70 percent of charged and investigated persons have never represented by attorney-at-law so their right to defense in criminal procedures is ensured not at all. The half of 30 percent means designated legal representatives but their enthusiasm and activity are minimal or rather formal during the proceedings. According to the empirical surveys⁷ 65-70 percent of charged persons are unsatisfied the function of their designated, state financed legal representatives. The reasons of disturbance in operation and low efficiency of free legal aid may be defined in five main points, taking into account the critics made by the Ombudsman and NGOs⁸.

- Fragmented regulation on accession of legal aid (e.g. honoraria for legal aid must be reimbursed to the designated attorney-at-law in criminal cases regardless the financial situation of the charged person that is not in harmony with the provision in the UN Covenant on Civil and Political Rights that requires free legal aid for persons in need);
- Errors in the practice of authorities in distribution of legal services,
- Absence of state control and assessment of legal services, protection of customers' rights,
- Missing consequences for poor services and damages for clients, and
- Inadequate budget sources on free legal aid (e.g. finance on legal protection in a broad meaning was decreased from 5 percent to 3.5 in recent five years⁹).

Beyond the state-subsided legal assistance free legal aid has been available rather in cities and in the capital for certain number of people in need. At first it is in the Ombudsman Office providing legal counselling and explanation for clients inside the legal complain procedure and for the public in booklets, homepage or press conferences. The courts also have free legal assistance for poor clients without legal representative or proper information (in weekly duty-service or by the judge inside the proceedings). For instance, the judicial secretary may put down the application in writing or give instructions on lawsuit to the party. There are some interactive homepages of offices or authorities giving general or concrete answer of the client (e.g. the Office for Immigration and Nationality Affairs).

⁷ Fenyvesi Csaba: A kirendelt védői intézmény problematikája, Jogelméleti Szemle, 2001/2. <http://jesz.ajk.elte.hu/fenyvesi6.html>

⁸ For instance, the report of the Ombudsman No. OBH 6564/96 and her correspondence with the Hungarian Bar of Associations in Ügyvédek Lapja 1997/2:53-55; Hungarian Helsinki Committee's cases see <http://www.tamogass.helsinki.hu/>

⁹ Data from the conference on the experiences on the legal protection in Hungary in 2009-2014 held by the University of Szeged, 10 Nov 2014, Szeged

The attorneys-at-law also maintain interactive homepages providing pro bono assistance or the free legal aid is supported by sponsors¹⁰ because this service attracts directly or indirectly further clients on business basis. More and more NGOs are providing specific legal assistance (e.g. for refugees, handicapped persons, patient groups, victims of domestic violence) freely, and recently the trade unions are active to manage legal advice and information for workers in need and migrant labourers due to the EU funds.¹¹

The other forms of pro bono activity of the legal professionals are hardly accountable. What we have to take into account that the absolute number of attorneys-at-law is upgraded in Hungary and the trend of growing has been indicated in whole Europe. Table 3 indicates it with exception Greece.

Table 3: Number of attorneys-at-law in Europe¹²

Country	Total number 2004 - 2015		From them women 2004 – 2015		Gender rate
Austria	4 494	5 940	605	1 210	20%
Bulgaria	10 206	12 629	----	6 440	51%
Cyprus	---	2 994	---	1 505	50%
Czech Rep.	8 937	12 015	3 229	4 228	35%
Denmark	4 490	----	1 037	---	23%
Croatia	2 568	4 483	860	1 917	43%
Estonia	---	947	---	424	45%
Finland	---	2 048	---	589	29%
Greece (-)	33 727	21 439	15919	12 276	57%
The Netherlands	12 743	----	kb. 4 842	---	38%
Ireland	1 479	2 243	537	880	39%
Poland	7 672	36 582	kb. 2 300	19 313	53%
Lithuania	---	2 074	---	796	38%
Hungary	9 200	12 512	3 100	5 490	44%
Norway	4296	7 450 (membership in bar is optional)	8 15	2 290	31%
Portugal	21 726	29 240	10 379	15 607	63%
Romania	cca.. 14 800	23 784	cca. 7 800	----	52%
Switzerland	7 056	----	1387	---	20%
Sweden	4 129	5 618	757	1611	29%
Slovakia	3 831	5 967	1508	2437	41%
Slovenia	962	1611	340	711	44%
UK	---	168303+17516 barristers	---	81043+5545 barristers	46%
Turkey	---	86 981	---	35 216	40%

Although the gender rate is diverse in Europe, the ratio of female attorneys is between 20 and 63 percent, the absolute number of women among the legal representatives has increased for last ten years. It means that the typical masculine job of attorney-at-law is emancipated.

Table 4: Gender rate and income of attorney-at-law in some European countries (2004-2015)¹³

¹⁰ For instance: www.onlinejogsebesz.hu or www.ingyenjogasz.hu

¹¹ For instance: www.helsinki.hu, www.tasz.hu/jogsegely, www.jogpont.hu

¹² Data from the <http://www.ccbe.org/>

¹³ Source: <http://www.ccbe.org/> -- Council of Bars and Law Societies of Europe

	Total number of attorneys-at-law 2004/2015		From them female 2004/2015		
France	34 454	60 223	7 523	32 531	54%
Yearly income in average	2009: 74 586 EUR				
Italy	---	246 786	---	115 494	47%
Yearly income in average	2009: 48 805 EUR				
Spain	---	151 096 active 102 094 inactive.	---	105 530	41%
Yearly income in average	2009: 47 956 EUR				
Belgium	12 672	18 174	----	4 472	25%
Yearly income in average	2009: 46 042 EUR				
Hungary	9 200	12 512	3 100	5 490	44%
Yearly income in average	2015: 15 600 EUR (minimum) ¹⁴				

Table 4 indicates that the high rate of women attorneys-at-law may contribute to higher income level while females participate more times in pro bono legal counselling contributing to the social justice and involvement of local community life or networks.

According to the survey in two waves (1998, 2015) on attorneys-at-law in Hungary¹⁵ there is certain progress in the pro bono work of legal professionals despite of their heterogeneous society. The growing number of attorneys is divided into three strata on the basis of their income, mentality, social origin and life standards. Regardless these increasing inequalities they consider own legal work as a profession that includes social responsibility providing free legal aid for persons in environment (family members, friend, neighbours, community members) despite their busy working time (in average daily at least 9 hours and 3 hours on weekend). Increase of women among attorneys contributes to extended networks of professionals, cooperation with NGOs, pro bono actions in legal representation, solidarity and capital of connections despite of belonging not to the upper classes. It means that a stronger network and cultural capacity building (mainly by women) may compensate the lower income and possessions. Finally, the respondent explained that they prefer pro bono work not in a isolated way but in cooperation with NGOs because the contractual civil organisations can operate as gatekeepers and mediators towards the people in need. In this context the legal education can play a multiplication role setting up legal clinics and inspiring pro bono legal work and social responsibility of law practitioners in polarised societies.

III. Legal Clinics in CEE

Legal education in which setting up legal clinics were started in late 1990s are partly successful and partly failed. Table 5 summaries the positive factors to success and hindering components to introduce alternative, interactive methods in legal education on the grounds of various publications.¹⁶

¹⁴ Own calculation on the basis of the survey made by Utasi, Á. (2015)

¹⁵ In 1998 the posted questionnaires (N=1293) and in 2015 (N=1276) the on-line questionnaires were anonym and managed by the University of Szeged together with the Hungarian Bar of Associations. See the results and methods: Az ügyvédek hivatásrendje. Szerk: Utasi Ágnes, Új Mandátum, Budapest, 1999. Ügyvédek a gyorsuló időben (1998-2015) Szerk: Utasi Ágnes. Belvedere, Szeged, 2016.

¹⁶ Romulus Gidro and Veronica Rebreanu: Four Years of a Romanian Juridical Clinic 1998-2002. Journal of Clinical Legal Education, 2005, Vol.7:49-57.; Barbara Preložnjak: Clinical legal education in Croatia – from providing legal

Table 5: Dis/advantages for setting up and operation of legal clinics in CEE regions

Supportive conditions	Objections
LC was incorporated in the curriculum as a elective courses and was conducted by university teachers within their obligatory teaching hours (e.g. in Poland).	The clinical teaching is not required to the academic advancement to the European staff to the scientific advancement (PhD, LL.M) – theoretical education is dominant
The LC program awards students 6 credit points within the European Credit Transfer System (e.g. Poland, Hungary), 10 credit (Croatia)	Absence of motivated, prepared staff in legal education for joint work with students
Independent LC office with one full-time administrative employee, and was completed by the clinic's obtaining interdepartmental status (e.g. in Poland)	Absence of local adaptation of LC model inserting into the curricula – the mechanical access is risky
Standardization of LC in certain countries in CEE (self-regulation based on autonomy)	Absence of sustainable institutional and financial model of LC obtaining proper human and material resources – LC is more expensive than classical classroom courses and proper infrastructure for clinical education (e.g. simulation room) is missing in general
Material and professional supports from external sources (such as PILnet, ABA, CEELI, OSI, UNHCR)	Hardship to involve the law practitioners into the legal education for small university honorarium
Supports the office of the Ombudsman in fulfilling its mission (e.g. in Poland)	Lack of a tradition of <i>pro publico bono</i> work among lawyers
Social polarization and inequality is growing – free legal aid is needed for more and more people	Upgraded number of law students in classroom courses – with passive students
Reforms in free legal aid (state financed and regulated)	Isolated students in credit system and in ECTS – absence of cooperative, small groups in studies
Social image of universities and faculties is determinant connecting to local communities	Public relations of the clinical activity – PR (in press, communication...) in a market economy is far from the university practice
	Absence of real information and expectation of law students on clinical education – too much or too low number of students – absence of proper selection principle
Extended practical education may contribute to the judicial efficiency (fair procedure, Art 6 in ECHR) that is problematic in the CEE	Recruitment of students after studies in procedural laws (in last courses)
Ethical principles and guidelines can be implemented inside the curricula through the LC cases	Lack of liability and professional insurance contract for legal clinics
Preparing legal documents (e.g. memorandum of ongoing case to the next LC students) are required that is missing in continental legal education	Absence of clinical material (textbooks, case studies, methods, format of succeed personal data of clients) and methods in supervision of students
Law faculties at private schools are established without burden of traditions	Introduction of LC without networks covering each faculty, missing co-operation among them

The most progressive and institutionalized legal clinical education has been established in Poland. Legal clinics are being created in most of the Polish law faculties educating the new

assistance to the poor to practical education of students. Journal of Clinical Legal Education, 2013, Vol.19: 373-380; Steven Auster Miller: ABA/CEELI's Law Clinic Programs in Croatia. Journal of Clinical Legal Education, June 2003: 58-66; Emilija Stankovic Karajovic: ABA/CEELI's Clinical Legal Education Programme in Serbia. Journal of Clinical Legal Education, July 2004:80-89; Dubravka Aksamovic and Philip Genty: An Examination of the Challenges, Success and Setbacks for Clinical Legal Education in Eastern Europe. International Journal of Clinical Legal Education, 2014, Vol.19:427-438.

generations of lawyers in democracy, soliciting the rule of law, protecting human dignity. This movement supports the office of the Ombudsman in fulfilling its mission, it also brings hope that the new generations of lawyers will guarantee better functioning of the justice system in Poland, and thus contribute to the enhancement of the citizens' trust to their state.¹⁷ The creation of legal clinics at law faculties of many universities were the beginning of a new era in legal education in 1990s. Since 2005 the independent legal clinic office with one full-time administrative employee, and was completed by the clinic's obtaining interdepartmental status. The legal clinic may become a superb laboratory for experimenting with alternative teaching methods from Krakow to Warsaw. Those are bringing university education closer to real life including the students' responsibility for one's own words, i.e. for the legal advice given.¹⁸ Moreover, those mean a fruitful three-way exchange of perspective (advocate with years of experience in the practice, the academic who has spent years considering the theory of the law and aspirations for the justice system, and the student who sees the process with fresh eyes) as the teaching methods reflect.¹⁹ Similarly to the live client law clinics operating in African countries, legal clinics can play an additional – and in poor regions outstanding - role in supplementing the work of the national legal aid bodies. National legal aid schemes can enter into partnership agreements with university law clinics to compensate them for providing legal aid services for poor people that cannot be reached by the national body.²⁰

In brief, there are many reasons for the rapid growth of clinical legal education programs in our region since 1990s as in Africa, Latin-America and China. However, the main hindering factor would be the weakness in will of total reform in legal education teaching the „legal, normative thinking” for students and transforming them from a passive receiver of legal texts into a critical and active lawyer who is capable to autonomously undertake actions in possession of legal skills. In this way the best practices from the countries with rich experiences in clinical education cannot become the mainstream of changes in legal education.²¹

Today there is a global clinical movement involving the US, Europe, Africa, Asia and other parts of the world due to the dual nature of the LC: it is an innovative form of teaching and it provides free legal aid for marginalized or poor persons although the LCs' sustainability is fragile in majority of clinical programs. This dualism means dual beneficiary for law students developing an ethical understanding and clients in polarized societies facing severe inequalities. According to a fresh research (N= 110)²² the European clinical programs are mainly human rights, asylum and immigration, anti-discrimination, street law activities raising the public awareness of law, and there are a considerable number of clinics committed also with the gender issues, environment and prisoners' conditions. The Bologna process, student mobility programs (ERASMUS) and international associations in LC also contribute to network development. As the Union Ministers of the Education expressed on the conference held in London (2007):“Higher education should play a decisive role in cultivating social cohesion, reducing inequalities and raising the level of

¹⁷ Professor Andrzej Zoll, the Polish Ombudsman, p.13 in *The Legal Clinics. The Idea, Organization, Methodology*. Fundacja Uniwersyteckich Poradni Prawnych 2005, Warsaw, Poland

¹⁸ Professor Eleonora Zielińska, Legal Clinic, Faculty of Law and Administration of the Warsaw University; p.14; Thoughts on the reform of the teaching of law by Professor Maria Szewczyk, Legal Clinic, the Jagiellonian University in Kraków, p.17 in: *The Legal Clinics. The Idea, Organization, Methodology*. Fundacja Uniwersyteckich Poradni Prawnych 2005, Warsaw, Poland

¹⁹ Chapter V: The methodology of clinical teaching of law - Dr. hab. Fryderyk Zoll, the Jagiellonian University in Kraków, Dr. Barbara Namysłowska-Gabrysiak, the Warsaw University) pp.186-208 in: *The Legal Clinics. The Idea, Organization, Methodology*. Fundacja Uniwersyteckich Poradni Prawnych 2005, Warsaw, Poland

²⁰ *African Law Clinicians' Manual* by David Mcquoid-Mason and Robin Palmer, 2013, Institute for Professional Legal Training, Durban, South Africa

²¹ Roy Stuckey et.all. University of South Carolina, School of Law: Best Practices for Legal Education, 2007. Clinical Legal Education Association. p.227. see the 62 references on the Executive Summary and Key Recommendations (e.g. in-house clinical programs)

²² Clelia Bartoli: *Legal Clinics in Europe: for a commitment of higher education in social justice*. *Diritto & Questioni Pubbliche*, Special Issue, 2016 May

knowledge, skills and competences in society”. Thus the LC is a good example of this social accountability of universities.

What would be the prospect for the future of clinical education in our region?²³The clinics will continue to spread and gradually will be accepted and integrated to the curriculum under the influence of the Western European educative and EU legislative progress together with umbrella organization (such as the European Network for Clinical Legal Education), or most of the clinics will fail because it is not a traditional and typical teaching methodology in Eastern Europe. The third version would be an amalgam of success and failure of clinics, in particular in Hungary.

IV. Legal Clinics in Hungary

Beyond the regional characters there are some specialities that influence the chances of clinical education in Hungary. The Bologna system with dualistic degrees (BA and MA) is refused in legal education taking five years (MA) the unified studies without specialization in law. Mobility of lawyers is limited both horizontally (transversal from one to another legal profession) and between the practitioners and academics. Skills – such as legal reasoning and analysis, legal research, legal drafting, problem-solving and proper communication with clients – will become increasingly important. These skills are inherently mobile, and law faculties that provide them to their students will be preparing them to be competitive in the future European (and global) labor markets for lawyers. However, these skills are supposed to be available mainly in practice after degree and not at university.

The clinical programs are by their nature more expensive per student than other forms of teaching and in time of severe budget cut and in absence of state subsidies in legal education the economic stability of clinical programs have remained fragile. Furthermore, clinical programs have no obligatory civil liability insurance, those are considered as a teaching method while the accumulation of practice into the legal studies has not been incorporated to the profession of clinical teachers. The qualification of teachers is based only upon academic title without training and requirements in presentation, communication, supervision of students or in efficient teaching methods.

The Hungarian Bar Association through its members (attorneys-at-law) has a judicial monopoly of legal counseling. Consequently, free legal aid service that is available for certain entitled people in need is financed (with fixed tariff) by the state through only attorneys-at-law registered by the authorities (Justice Office, governmental district units). In this way clinics, NGOs and trade unions may provide supplemental free legal aid (legal advice and representation *pro bono publico*) only for segregated, poor, vulnerable persons in need out of these (monopolized) judicial frames.²⁴ A lawyer’s professional identity does not include the understanding of why and how to engage in pro bono service, and Bar Association has no accreditation standard for law schools for students participation in pro bono activities – differing from the US traditions.²⁵ For instance, free legal aid for a start-up is considered as a challenge for this monopoly for attorney-at-law.²⁶

²³ Dubravka Aksamovic and Philip Genty: An Examination of the Challenges, Success and Setbacks for Clinical Legal Education in Eastern Europe. *International Journal of Clinical Legal Education*, 2014, Vol.19:427-438.

²⁴ Act XI of 1998 on attorneys-at-law (Art 2 and 5) that allows them to provide legal services and advices in taxation, finance, business, real estate and patent issues; Act LXXX of 2003 on legal assistance together with its implementation provisions (Ministerial Decree of Justice No. 42 of 2003, 19 December on registry of assisting attorneys, No.11 of 2004, 30 March, No.7 of 2002, 30 March, No.32 of 2003, 22 August on tariff and reimbursement of legal assistant, No. 56 of 2007, 22 December on accession to free legal assistance, Directive 2003/8/EC on accession to justice in cross-border legal disputes

²⁵ Cynthia F. Adcock: Beyond Externships and Clinics: Integrating Access to Justice Education into the Curriculum, *Journal of Legal Education*, May 2013, Vol. 62: 566-575

²⁶ Meeting with dr. Bánáti, János, president of the Hungarian Bar Association, 18 June 2014

Seeking the own model for legal clinics, the legal education that is operated at nine faculties can be divided into three parts:

- LC does not exist (PPKE);
- LC exists as additional, timely form of legal education (KRE, KE, ME, DE, CEU including street-law activities, occasional legal assistance for local people);
- LC exists as integrative part of curricula (ELTE, PTE, SZTE,).

For years the PILnet and Central European University (together with OSI) have inspired the institutionalized cooperation among the Hungarian LC programs (newsletter, meeting and conference on pro bono legal services). The Visegrad Fund also supported development of materials in 2014-15. The ENCLE recent conference (October 2015) was held in Budapest in management of ELTE (Faculty of Law, Eötvös Lóránd University, Budapest).

V. *Legal clinic in Szeged*

Since 2005 in *Szeged* (faculty of law, SZTE) the legal clinic has operated continuously involving in average 15 students per semester (attending the 3rd - 9th semester) under the supervision of 6-8 tutors (attorney-at-law and senior teachers). This LC with the longest uninterrupted history in Hungary is hosted by the Department of the Constitutional law. The guidelines of operation, its place inside the curricula and number of credit²⁷ are approved by the Faculty Council. There are the main equally relevant goals (mission) of the LC:

- making experimental courses to students that are interested in this elective (non-mandatory) part of curricula that is based on abstract, theoretical knowledge of norms,
- preparation for the legal profession providing for students with a live client experience,
- development of ethical issues through practical cases, such as competition or clash of interests, respect of otherness, anti-corruption, fair communication also with underclass people, trust on client, fact-funding from many sources, punctuality, and
- giving legal services for disadvantaged groups as a chance for accession to justice.

The LC as optional (elective) course is divided into three substantial parts (LC I, II, III):

- preparatory (legal, institutional, communication, administrative, psychological training for students with guest speakers and tutors) course taking 4 days (40 hours);
- legal counseling for NGOs and segregated clients in their institutes, city hall, NGO offices at least 30 hours per semester - in situ by the students (student duty hours meeting with clients);
- report of the cases to the tutors and consultations with them at least in 16 hours per semester.

The main data on counseling and LC operation in the period of 2005-2017 are as follows:

- The total number of participating students is 200 (it is below our maximal capacity). Beyond these full-time students the non-regular (part-time) students (at evening courses), and ERASMUS law students attending the course on non-profit law in Hungary are received. Since 2011 the LC has been available also for part-time students.
- The total number of assisted clients with free legal aid at LC in Szeged was 750, and together with their involved family members they meant at least 2250 people.

²⁷ Ministerial Decree No. 39 of 2012, November 21 on output in tertiary education determines that legal MA shall be based on 300 credits, so the 6 credits in LC are marginal.

- The number of cases was 700 from them 34.5% belonged to the social and equal rights, 15% to family law and child protection, 3.5% to patient rights, 3.5% to non-profit organizations' rights, 18% to housing, 3.5% to handicapped persons' rights, 7% to labor law and 22% to public administrative law.
- This statistics outlines the main profile of LC: anti-discrimination law, non-profit organizations law, housing, social allowances, social insurance, labor law, handicapped persons' rights, family law, child protection. It means that penal cases, migration, commercial or corporate law is out of LC's portfolio. The legal counseling of LC is hardly compatible to court cases for mandatory professional representative, strict deadlines and absence of malpractice liability insurance. In this way majority of legal assistance is relating to explanation of the legal conditions, to public administration, municipal procedures, mediation in a conflict or preparatory of law-suit.
- Upon request LC assists to submit application for grants or to give presentation on legal changes (for instance, how handicapped persons can access to the tertiary education or how the testament would be defined) or training on recognition of violence inside the household/family. It is rather a street-law activity.
- Some examples from recent issues and cases: establishing social cooperative for marginalized, uneducated or not fully active people; how to modify the statute of NGO in accordance with the new Code Civil, tax and public revenues of public utility organizations; termination of NGO and how to protect the processed personal data of prior members and clients; complaint for exclusion of moped for handicapped person from the public transport; standardization of shops that are available for blind persons (a new brand 'Friendly shopping for blind persons'); extra rental charges in community flats for Roma; denied address card for Roma.

How can we interpret the partnership?

- Our LC considers the contractual organisations as partners, and student participating in the LC program treats clients as partners in "learning by doing".
- The LC of the Faculty of Law has numerous partners on the grounds of biannual partnership agreements with local NGOs representing Roma, handicapped, unemployed, sick, homeless persons and families, early children development centre, centre for volunteers, abandoned children in need, and recently the local/regional municipal social departments and National Centre of Patients, Children and Inmates that may forward marginalized clients to the LC. In this way NGOs and local municipal promote the LC services and manage the accession of potential clients during the official hours in the NGOs seat/office.
- On the other side, independency in profile, responsibility or refusal, as well as curricula of LC is guaranteed in a cooperative spirit, for instance LC accepts the legal claim of NGOs in statute modification or project planning while in examination and summer periods tutors have to manage the urgent claims from clients.
- There is no advertisement on LC but personal information from prior clients or chats also inspire local people to become potential clients. Time to time information on LC in local media (radio and press) provides certain publicity of the social undertaking of the university including the operation of LC.

The LC infrastructure is very solid: it has own office with full furniture and equipments²⁸ inside the university for training and tutorial consultations, and for board meeting with representatives of the partners. LC has an advertisement on homepage of the faculty²⁹, e.g. how to

²⁸ The only external support to the furniture and PCs of the LC office was provided by the Tertiary Education Fund in 2005-2006.

²⁹ www.juris.u-szeged.hu/oktatas/gyakorlati-kepzesek/jogklinika

join the study tour in local social and NGO institutions, how the students' evaluate the LC work (e.g. the number of credit is not proportional to much efforts required from the student in clinical education and counseling) or on the next Open Day. Furthermore, all of tutors (4-5) are working in joint position or as part-time worker at university without own administrative staff in a non-independent unit.

Despite of these efforts and result the enthusiasm of legal teachers and awareness on clinical education is limited. The recent grant (2016-2017)³⁰ would extend the internal knowledge of this alternative teaching method and to develop networks of LC with professionals, too. Furthermore, a new textbook and materials for LC students are under preparation.

VI. Conclusions

As it is described, free legal aid for people in need is available in a limited way and its accession is far from the growing circle of persons in distress, hardship and discrimination in Hungary. The state-financed legal assistance is accessible for urban nationals in part while alternative, non-governmental legal aids shall become stronger including the law practitioners' pro bono work. In absence of higher sensitivity of law practitioners and law students to the fragile, frustrated people the social exclusion would mean also legal exclusion from the rule-of-law. The legal clinics in legal education may prevent this elimination contributing to develop the ethos of legal protectors in Hungary.

In Hungary the clinical education has limited success because the traditions of textualization, tight interpretation of legal sources are stronger, and the distance from the legal practice to the theory of law is wider than the pressure for changes in a market economy and pluralistic civil society. Today case law, international/ECJ case/customary law are alienated from law practitioners on the grounds of theoretical traditions in legal studies, and new generation of lawyers with enthusiasm of case law and professional skills are considered as misfits by majority of professionals. This interactive method of learning for law students may develop their ethics and competences in the forthcoming labour market.

Due to internal and external conformity the frontal education has remained dominant and attempts in mediation, moot courts, legal clinics appears as exotic exceptions in unified, non-specialized legal education. The values of autonomy, democracy, competitiveness and professional efficiency in cotemporary society are weak³¹ so fragmented networks (of teachers, alumni, clinics and watchdog NGOs) have to be developed in great extent in future combating social exclusion and inequalities.

³⁰ About 3 million HUF is available from the developing fund from the Ministry of Justice in Szeged LC.

³¹ The values system was surveyed in 2009 and in 2013 proving minimal changes: Hungarians have values of secularization but their mentality is closed, inward, paternalistic, the level of public trust and individual confidence is the last in Europe, expectations towards the state is high (infantilism is proved that state must be active in equalization of chances but prices of state services are underestimated), corruption and infringe of norms at daily level is generally accepted, instrumentalization of norms is going on. See Tóth István Gy.: *Bizalomhiány, normazavarok, igazságtalanságérzet és paternalizmus a magyar társadalom érték szerkezetében. A gazdasági felemelkedés társadalmi-kulturális feltételei* című kutatás zárójelentése, TÁRKI, Budapest, 2009; the repetitive surveys results on the grounds of WVS S5 see Keller Tamás: *Értékek 2013. október (Bizalomhiány, normakövetés, az állam szerepéről és a demokráciáról alkotott vélemények alakulása Magyarországon)* Tárki, 2013. www.tarki.hu/hu/research/gazdkult/index.html