

***El Programa de Clínicas Legales
de Polonia y el papel de la polaca
Clínicas de la Fundación Legal***

***The Polish Legal Clinics Program
and the role of the Polish
Legal Clinics Foundation***

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Resumen

El programa de Clínica Legal, que está creciendo rápidamente en Polonia, ha llegado a una fase en la que la visión de futuro y la consolidación de los objetivos son de gran importancia. Por esta misma razón, a la vuelta de los años 2001 y 2002 la Clínica Legal y las personas involucradas en el movimiento clínico se decidió llamar a la existencia de la Fundación de Clínica Legal, que asumiría el deber de fortalecer la estructura y la construcción de una plataforma de cooperación y dar forma al futuro del movimiento clínico. Los objetivos asumen proporcionar no sólo garantizar la estabilidad financiera del movimiento clínico, sino también para constituir un foro que reunirá a los esfuerzos para mejorar la posición de las clínicas en la comunidad académica y jurídica, y buscar una fórmula para inscribir centros de asistencia jurídica en el ordenamiento jurídico polaco.

En la actualidad hay 25 centros de asistencia jurídica establecida en cada escuela de derecho, de aproximadamente diez mil personas al año obtener la asistencia jurídica como resultado del trabajo de las clínicas jurídicas en Polonia. Los destinatarios de estos servicios son los representantes de los grupos sociales más débiles, como los desempleados, los sin techo, jubilados, discapacitados, víctimas de delitos, las mujeres en situaciones de crisis, los extranjeros y los refugiados. Cerca de 1.800 estudiantes y más de 200 profesores participan en el programa todos los años (la mayoría de los cuales también son abogados en ejercicio) resolver en forma escrita cerca de 12.000 casos.

Palabras clave

Educación Clínica Legal, Fundación polaca de Clínica Legal.

Abstract

The legal clinics program, which is growing fast in Poland, has reached a phase in which forward thinking and consolidation of objectives are of great importance. For this very reason, at the turn of the year 2001 and 2002 the legal clinics and the people involved in the clinical movement decided to call into being the Legal Clinics Foundation, which would take on the duty of strengthening the structure, and constructing a platform for cooperating and shaping the future of the clinical movement. The objectives assumed provide not only for ensuring financial stability of the clinical movement, but also to constitute a forum that would bring together the efforts to enhance the clinics' position in the academic and legal community, and would search for a formula to inscribe legal clinics into the Polish legal system.

At present there are 25 legal clinics established at every law school, approximately ten thousand people a year obtain legal assistance as a result of the work of legal clinics in Poland. The recipients of these services are representatives of the weakest social groups, such as the unemployed, the homeless, pensioners, disabled people, crime victims, women in crisis, foreigners and refugees. Nearly 1,800 students and over 200 faculty members participate in the program every year (a majority of whom are also practicing lawyers) solving in written form nearly 12,000 cases.

Key words

Clinical legal education, Polish Legal Clinics Foundation

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1. History in outline

The first Polish legal clinic was established at the Law Faculty of the Jagiellonian University in Kraków on October 1, 1997. Prior to that, a conference on the clinical teaching of law organized by the American Embassy and the Polish office of the Organization for Security and Cooperation in Europe was held at the Jagiellonian University. In the beginning of the year 1998 the Faculty of Law and Administration of the Warsaw University started a lecture entitled "Legal clinic" thus calling to life a second legal clinic in Poland.

The European Law Students' Association ELSA Poland has also had considerable influence on the development of the law education system. In May 1998 in Szczecin, ELSA organized a conference entitled "Reform of Legal Education. The Development of the Idea of Legal Clinics", which saw a serious discussion concerning the development of clinical teaching in Poland. The seminar served well to publicize the idea, as it was organized together with the National Convention of the Polish Lawyers' Association and the National Convention of the Law Faculty Deans. The Szczecin meeting gave an impulse to the development of the idea of the clinical movement in Poland. At present clinics operate at all of the state owned law faculties placed in the following cities: Kraków, Warsaw, Białystok, Toruń, Poznań, Lublin – the Maria Curie-Skłodowska University, Lublin – the Catholic University of Lublin, Rzeszów, Katowice, Opole, Słubice, Gdańsk, Wrocław, Łódź, Olsztyn and Szczecin.

On June 11, 2001 during a meeting of the representatives of all Polish legal clinics it was first proposed to establish a foundation. In accordance with the agreed working time schedule, in the fall of that year, a foundation statute was drafted by a team of

the Legal Clinic of the Jagiellonian University in Kraków, which was then submitted to all the legal clinics for consultation.

In December 2001 three representatives of the Polish legal clinics were invited to participate in a study visit to the Republic of South Africa, where the clinical teaching program had been successfully developing for the past 30 years. The visit was designed and organized by the Public Interest Law Initiative (PILI) (now: PILnet¹) affiliated with the Columbia University in New York and financed by the Ford Foundation. The trip resulted in the devising of a strategy for the development of the Polish legal clinics program based on the experience of the Republic of South Africa, and consequently in the establishment of the Legal Clinics Foundation.

With the financial, logistical and professional assistance of the Stefan Batory Foundation (in particular the legal program headed by Grzegorz Wiaderek) the plan to establish the Foundation was realized over a period of one year. On February 15, 2002 the founders appointed (unanimously) Łukasz Bojarski (the Helsinki Foundation for Human Rights) Chairman of the Foundation Council, and the other three founders, i.e. Katarzyna Hebda (Secretary of the ELSA Lawyers Society, Office of the Committee For European Integration), Magdalena Olczyk (Office of the Ombudsman) and Jakub Bogatyński (the Stefan Batory Foundation) members of the Foundation Council. Furthermore, the founders passed the Foundation statute² and elected the members of the Board: Filip Czernicki – President of the Board, Izabela Gajewska-Kraśnicka of the University of Białystok, Dr. Piotr Girdwoyń of the Warsaw University, Dr. Paweł Wiliński of the Adam Mickiewicz University in Poznań, and Attorney-at-Law Filip Wejman of the Jagiellonian University in Kraków. The founders (at the onset of the Foundation's activities they were the only members of the Foundation Council) established the Foundation by a notary deed dated February 28, 2002.

The Foundation was registered in the National Court Register on June 3, 2002, it was assigned the REGON statistical number and the NIP tax number, and opened bank accounts at the Bank Pekao S.A. On June 30, 2002 the Foundation Council passed Regulations for the Foundation's financial management, standards, a yearly financial plan, and the composition of the Advisory Board. Since the establishment of the Foundation, the Board met one time a month on the average, collectively making all the operational and strategic decisions.

2. The Foundation Objectives and Means of Their Attainment

Apart from the task of financing legal clinics in Poland, the Legal Clinics Foundation serves to strengthen the potential of the clinical program for the future. For this purpose efforts are made to standardize and to maintain adequately high functioning standards of clinical education. In accordance with the statute, the Foundation achieves its objectives in particular through: supporting cooperation between clinics, supporting international cooperation in the field of practical legal education, organiz-

¹ <http://www.pilnet.org/>

² http://www.fupp.org.pl/index_eng.php?id=statute

ing trainings, conferences, presentations, publishing activity, collecting and processing statistical data about the clinics' activities, collecting and disseminating know-how in the field of clinic organization, propagating the idea of free of charge legal assistance.

One of the Foundation's first projects was the organization of the Fifth Regional Conference of Clinical Law Teaching which was held on November 15-16, 2002 in Warsaw and concerned itself with the development of the idea of legal assistance in our geographical region. The conference was organized by the Open Society Justice Initiative, the Columbia Law School's Public Interest Law Initiative and the Legal Clinics Foundation in cooperation with the Szpitalna NGO Center, and it was sponsored by the Open Society Institute. The main topics of the conference were the prospects for development and the devising of a strategy for the future of the legal clinics program. The participants focused on the analysis of the various legal clinic models, they made an attempt to develop a method to support them and to strengthen existing clinics. Approximately 70 people participated in the conference from countries such as: Albania, Angola, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Lithuania, Latvia, Macedonia, Mongolia, Mozambique, Romania, Russia, Slovakia, Turkey, the Ukraine, Uzbekistan, Hungary. Lectures were given by guests from Hungary, the Czech Republic, Argentina and the USA. Representatives of legal clinics operating in Poland were also present, among representatives from Kraków, Białystok, Toruń, Rzeszów, Lublin, Szczecin, Poznań, Łódź and Warsaw.

In December 2002 the first meeting of the legal clinics representatives was organized under the auspices of the Foundation at the Szpitalna NGO Center. In December 2002 representatives of the Foundation participated also in the "European forum of citizens' advice services" conference held in Brussels. In April 2003 a seminar was organized entitled: "Lawyers in *pro-bono* work."

During the first years after its incorporation, the Foundation focused on fulfilling its duties relating to providing financial and professional support to legal clinics. A wide-scale fund-raising campaign was undertaken. It resulted in the obtaining of means to finance the First Polish Legal Clinics Conference (held between October 24 and 26, 2003) and the publishing of the first in Poland and the region textbook on the clinical teaching of law (translated into English). Furthermore, the Foundation obtained valuable in-kind donations which were allocated to the most needing clinics as a result of a competition (two second-hand computer sets from the Baker & McKenzie law firm, Lex Omega software from Polskie Wydawnictwa Profesjonalne publishing house, fifteen sets of Legalis legal information software from Wydawnictwo C.H. Beck. publishing house).

In the year 2003 the first edition of a grant competition targeted at the legal clinics which had met the accepted operational standards was held. The grants for which the clinics applied were used to finance the employment of persons in charge of the clinic secretary offices, to cover administrative and office overheads and to purchase fixed assets. **For the past almost ten years of activity the Foundation granted legal clinics with material and financial means of the total value of appr. 200 000 USD (financial) and over 330 000 USD (in-kind).**

Apart from grant-related activities, the Foundation undertook a number of educational and other activities aimed at strengthening the legal clinics. As early as in the beginning of the year 2003 a web portal was inaugurated: www.fupp.org.pl, which is intended as a channel of communications and of disseminating knowledge on the legal clinics movement. The Internet website contains information not only on the Foundation itself but also about related programs and the activities of the legal clinics. Current information is moreover distributed through the kliniki@yahoogroups.com news-group.

Another important step was a series of clinic visitations. All clinics welcomed the members of the Foundation Board and at the same time declared to have many questions and concrete issues they wished to discuss. These meetings were an opportunity to discuss the requirements to meet operational standards, to consult on solving current organizational and formal problems, as well as to build a stable position within the faculty structure. The cycle of meetings with the clinics enhanced clinic management skills and strengthened the clinics' position for the future.

Furthermore, in cooperation with the Helsinki Foundation, the Legal Clinics Foundation initiated research into the possibility of inscribing legal clinics into the Polish law order. A team was set up for this purpose, which was set the task of gathering and compiling legislative propositions that would consider various levels of "deepness" of the proposed changes of laws. At present the draft law on legal clinics is being consulted with the Foundation Advisory Board and the Ministry of Justice.

After consultation with the Stefan Batory Foundation, the Helsinki Foundation for Human Rights and the Polish-American Freedom Foundation, the Legal Clinics Foundation prepared an activation program and a program to propagate the idea of *pro publico bono* work among practicing lawyers. Within the framework of that program nearly 20 meetings were held with the largest law firms in Poland, the President and the members of the Presidium of the Bar Council, and the President and the Presidium of the National Council of Legal Advisers. These meetings instigated broad interest in the issue of involvement of lawyers in *pro publico bono* work and the possibility of patronage of the Bar Council and the National Council of Legal Advisers of the next notable initiative of the program, namely, the "Pro bono Lawyer" Competition. A few dozen nominations were submitted to the competition, 35 of which were qualified for consideration by the Competition Jury. At a first session held on March 3, 2004 in which the following members of the Jury participated:

- Professor Andrzej Zoll – the Ombudsman
- Professor Marek Safjan – President of the Constitutional Tribunal
- Professor Roman Hauser – President of the Supreme Administrative Court
- Attorney-at-Law Andrzej Kalwas – President of the National Council of Legal Advisers
- Attorney-at-Law Zenon Klatka – Vice President of the National Council of Legal Advisers
- Attorney-at-Law Stanisław Rymar – President of the Bar Council

A winner was selected. The winner was Szczepan Styranowski, a retired judge from

Olsztyn, nominated by the Olsztyn division of the Polish Committee for Social Welfare. The Jury also decided to honour seven persons. The official announcement of the competition results was made on March 29, 2004 in the seat of the "Rzeczpospolita" daily – the co-organizer of the competition. The winner received a statuette funded by the Minister of Justice, and diplomas were presented to the honoured persons. Since then the Pro Bono Lawyer Competition has been organized annual for 8 years already.

It is also worth mentioning that the Board of the Foundation coordinated visits of many guests from abroad, who visited Poland to research the development of the clinical program in Poland. In the past years we the Foundation Board organized visits for delegation coming from: Ukraine, Czech Republic, Moldova, Uzbekistan, China, Russia, Serbia, Belarus, Georgia, Japan, USA, Slovakia and Thailand. Those guests visited Poland to learn not only of the development of the clinical movement but also the activities and the role of nongovernmental organizations as such.

3. The main achievements of the Foundation

Building the position, image and the formal framework for the clinics and the Legal Clinics Foundation:

1. very quick and effective incorporation of the Foundation itself
2. constructing and integrating a network of legal clinics in Poland
3. the instigation of a feeling of unity among the clinics
4. legal clinics are presented in the mass-media ever more often through interviews and reports from the various projects
5. cooperation is tightened between the legal clinics and nongovernmental organizations, and legal clinics become permanently inscribed in that
6. in a very short time the Foundation gained a strong position among the nongovernmental organizations (a leader of the Nongovernmental Advisory Platform and member of the Board of the Polish NGO Federation)
7. obtaining of letters of support from the President of the Bar Council and the President of the Council of Legal Advisers
8. regularly conducting a session dedicated to legal clinics during the Convention of Deans of Polish Law Faculties
9. institutionalization and tightening of cooperation with the Ombudsman
10. Raising and enforcing operational standards among all (!) legal clinics (in the year 2003 nearly all legal clinics signed civil liability insurance agreements, whereas in the year 2002 only two clinics had such an insurance!)
11. The drafting of the law on legal clinics and participating in a team called by the Ministry of Justice to develop the law on legal assistance (with the stipulation to give due consideration to the character and regulations governing the work of legal clinics).

Projects carried out:

12. the members of the Board visited all clinics in existence in Poland, holding repeated meetings with representatives of clinics and university authorities

13. regularly organization of the conventions of legal clinics representatives under the auspices of the Foundation
14. organization of an international conferences dedicated to the clinical education in
15. regularly organization of the Polish Legal Clinics Conferences, by now there has been 16 conferences organized
16. conducting annually the Polish "Lawyer *pro bono*" Competition
17. Undertaking efforts to publish the first in Poland and in the region textbook – a legal clinics manual and publishing many more³.

4. Activities planned for the future

After first years of work relating to incorporating the Foundation, carrying our a number of important projects and realizing objectives relating to supplying financial and professional support to legal clinics, beside granting activities, the Foundation will undertake a number of educational and other activities aimed at strengthening the legal clinics. These initiatives will focus on:

- 1) professionalizing and standardizing the clinics' operations
- 2) publishing activity
- 3) coordinating and perfecting cooperation between clinics
- 4) keeping an archive of publications relating to legal clinics and keeping statistical data
- 5) improving the supply of IT and other equipment
- 6) promoting legal clinic activities
- 7) forging and strengthening international cooperation
- 8) lobbying for reforms of legal corporations
- 9) works aimed at incorporating legal clinics into the Polish legal system
- 10) monitoring of the application of law and quality of new laws
- 11) complementing the clinics' activities with cooperation with the Stefan Batory Foundation in relation to the phenomenon of corruption
- 12) broadening the scope of clinics' activities by introducing advising to women and nongovernmental organizations
- 13) training on citizen rights and duties in relation to Poland's membership in the European Union.

Professionalization and standardization of clinic activities - this is scheduled to be the key objective for the future. Reaching this objective will first of all strengthen the position of the individual clinics and secure them with a stable future and appreciation within the legal community. This objective will be accomplished through subsidizing training, conferences, seminars and publications.

Publishing activity – **following the first manual entitled: „The Legal Clinic – the Idea, Organization, Methodology,” the Foundation is planning to publish further textbooks**

³ <http://www.fupp.org.pl/index.php?id=raporty>

focusing exclusively on the methodology of teaching law in legal clinics. Majority of the textbooks published are available freely on-line from the Foundation web site⁴.

Coordinating and perfecting cooperation between clinics – this objective will be reached mainly through the participation of clinic representatives in country-level meetings and the personal contacts of the Board of the Legal Clinics Foundation with the staff of the various clinics (for example all clinics will be visited on a regular basis, in Warsaw cyclical training of clinic staff will be held). Moreover, the Board of the Foundation wishes to maintain the tradition of organizing one yearly Polish Legal Clinics Conference.

Keeping an archive of publications relating to legal clinics and keeping statistical data – the Board of the Foundation shall collect all materials relating to the activities of legal clinics in Poland and abroad thus building an archive of publications and articles. Collecting of half-yearly and yearly reports and of statistical data on the activities of the clinics will make it possible to obtain comparative data, and to determine the trends and directions in which legal clinics should evolve. This data will also present a statistical profile of clients, which will make it possible to determine whether clinics make correct choices as to the type of advice and legal information they offer.

Improving the supply of IT and other equipment – regranting subsidies and in-kind donations from corporations and law firms will allow to organize grant competitions for legal clinics in Poland. The equipment purchased will be supplied to developing and newly forged clinics.

Promoting legal clinics activities – fulfilling this objective will both serve the clinics (building a positive image) and enhance the clinics' ability to reach clients. To this end leaflets will be printed to inform of the activities and the addressed of legal clinics in Poland, cooperation will be forged with the largest law firms and legal corporations and the website will be continued and updated. It is also important to continue the information campaign about legal clinics targeted at local governments and state administration, so that legal clinics are considered a permanent and serious institution. Administration offices should learn to trust and appreciate legal clinics, which will encourage them to lend the students every assistance when students approach those offices on behalf of their clients.

Forging and strengthening international cooperation – the Polish program of clinical teaching of law is at present one of the leading programs of the kind in our region, it should therefore share its experience and initiate the creation of new clinics in the region. More often we invite guests from other countries of Central and Eastern Europe to participate in trainings, courses and study visits. Representatives of the Foundation take part in international clinic-related conferences. Plans for the future include the organization of weekly or fortnightly courses/scholarships to the USA for clinic supervisors. This project would allow scholarship holders to learn at first hand how the clinical program functions in the USA, to learn the methodology of clinical work and the program of strengthening the clinic's position at the faculties of law. This

⁴ <http://www.fupp.org.pl/index.php?id=raporty>

objective demands long-term preparation and the acquiring of significant financing resources.

Lobbying for reforms of legal corporations – this objective will be realized mostly in cooperation with the Helsinki Foundation for Human Rights and is related to a legal campaign currently under preparation to lobby for changes in a number of regulations that hinder the functioning of legal advising organizations in Poland. Furthermore, our Foundation would like to carry out a program to encourage practicing lawyers to undertake *pro publico bono* work. This program is also to be carried out in cooperation with the Helsinki Foundation for Human Rights and is a long-term undertaking. It will require lengthy preparation and will be preceded by a pilot program in which selected nongovernmental organizations will be prepared to receive the assistance of practicing lawyers and to conscientiously cooperate with the regional lawyers' legal advisers' corporations. Moreover, this objective is already being fulfilled by the organization of the yearly "Pro bono Lawyer" Competition.

Works aimed at incorporating legal clinics into the Polish legal system – on the basis of a first draft law on legal clinics, prepared in 1998 by the Legal Clinic in Kraków, the Foundation Board has presented an amended version thereof to the Ministry of Justice and was invited to participate in the creation of the draft law on access to legal assistance. In its principle the law shall give due consideration to the character of clinical work and shall furnish it with special rights.

Monitoring of the application of law and the quality of new laws – a task of great importance indeed and one that requires special attention and thorough preparation. The first segment of that project comprises the monitoring of law, the very function our Foundation intends to perform. A similar objective has been assumed by the Non-governmental Advisory Platform, of which our Foundation is one of the leaders. Therefore, this task may become significant not only to our Foundation but also to cooperating organizations. To aid the effective fulfillment of this task, the Board has prepared a preliminary tool in the form of a reporting questionnaire to be filled out by the clinics.

Complementing the clinic's activities with cooperation with the Stefan Batory Foundation in relation to the phenomenon of corruption – the Legal Clinics Foundation sees the need to join the efforts to monitor the phenomenon of corruption. It will be possible to collect information on conditions that provoke corruption and on cases of corruption from the network of clinics in Poland. For this very reason this issue was included in the Questionnaire to report on the application of the Legal Clinics Foundation subsidy. After the questionnaire is collected it will be possible to analyze and publish its results in the form of a report.

Broadening the scope of clinic's activities by introducing advising to women and nongovernmental organizations – this issue is already present in the clinics' activities. The Questionnaire to report on the application of the Legal Clinics Foundation subsidy makes the distinction between female and male clients, so that after the questionnaires are collected it is possible to generate information on female clinic clients and their problems. A similar solution has been applied to the issue of cooperation with nongovernmental organizations. The information collected will give us additional in-

formation on the needs of nongovernmental organizations. At the same time we wish to activate clinics and encourage them to deliver assistance to the organizations of the third sector. To the above effect we are planning to broaden our cooperation with the Academy for the Development of Philanthropy in Poland and the SPLOT Association.

Training on citizen rights and duties in relation to Poland's membership in the European Union – after accession to the European Union many rules have changed and been modified, first of all in respect to court ruling. The ruling process and the interpretation and formal methods were supplemented by: the principle of primacy of Community Law, the principle of direct applicability of Community Law, the principle of direct effect of Community Law, the principle of interpretation in line with Community Law, the principle of liability of the Communities and Member States for damages, and an entire system of preliminary rulings. It is worth giving future lawyers a broader training therein and make them aware of the fact that the Community law is an important point of reference for our legal order, and disseminating this knowledge among citizens as widely as possible.

5. The anticipated effects of Foundation's activities

Legal clinics will certainly not solve the existing problem of lack of access to free of charge legal assistance; they are nevertheless the only program that supplies free of charge legal assistance on the basis of reliable and highly professional academic staff. Along with the development of the program in Poland, the academic community and the community of practicing lawyers are becoming ever more sympathetic to social problems and – as the work of the persons delivering advice is free of charge – the voluntary service is growing ever stronger.

Representatives of groups to which the program is addressed will therefore obtain additional assistance with the matters of their daily lives, which will moreover be conscientious and comprehensive.

We hope that the actions undertaken by the Board of the Legal Clinics Foundation will support the organizational potential and independence of the individual clinics. We also count on strengthening the network of legal clinics and the contacts between them. Training, conferences, exchanges and publications will support the perfecting of methods and regulations governing the clinics operations.

The new comprehensive reporting program will result in better management and will allow for on-going monitoring and research into the social needs in respect to the services rendered by the clinics. Additionally, we will obtain information on the efficiency and effectiveness of our actions.

The hitherto research demonstrates that approximately ten thousand people a year obtain legal assistance as a result of the work of legal clinics. The recipients of these services are representatives of the weakest social groups, such as the unemployed, the homeless, pensioners, disabled people, crime victims, women in crisis, foreigners and refugees. Nearly 1,800 students and over 200 faculty members participate in the pro-

gram every year (a majority of whom are also practicing lawyers) solving in written form nearly 12,000 cases.

6. Epilogue

In the times of fast and multidirectional economic and social changes a significant part of the citizens have found themselves in a dire financial situation. At the same time the state, burdened with a multitude of problems, is often unable to see the needs and expectations of individuals. Free of charge legal assistance belongs to the basic and yet often inaccessible services within the scope of every-day life problems.

Our courts provide free of charge legal assistance only within legal proceedings before a court of law. Free of charge legal assistance may not be obtained in pre-trial procedure, also there is no institution which would provide citizens with free of charge information about their rights and duties. Organizations of the third sector need to assume this duty. It is probably for this very reason that that legal clinics observe rising demand for the services they render and win ever greater appreciation in the eyes of the students and of the faculty. Thousands of people on the average obtain assistance of legal clinics every year. This number is growing all the time.

On the basis of its program the Legal Clinics Foundation has the opportunity to support and organize a new perspective for the legal clinics in Poland, in which they train the new generations of lawyers using the latest educational methods and, at the same time, they play a complementary role in the state administration system, educating citizens about their rights and duties.