

# Legal Clinics and Access to Justice in Croatia: Perspectives and Challenges

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Zvonimir Jelinic<sup>1</sup>

## Abstract

In this article, I dwell upon the Croatian system of free legal aid in civil and administrative matters. The background of the system, its problems and deficiencies are firstly discussed. Primary attention is on the legal framework for legal clinics, their position within the system of legal education, the importance of their role within the system of free legal aid, types of legal assistance that legal clinics can provide and the way they are obtaining financial support for their operations. We shall also try to foresee the future of Croatian clinical legal education under the present normative scheme and propose some steps that, we firmly believe, have the actual capacity to promote further development of clinical legal education within the system of free legal aid.

## Introduction to Legal Assistance and Access to Justice: The Cornerstones of a Just Society

It seems appropriate to start this article with one of Deborah L. Rhode's quotes which brilliantly explains the gap between principle and practice.

'Equal justice under law' is one of America's most proudly proclaimed and widely violated legal principles ... millions of Americans lack any access to justice, let alone equal access ... according to most estimates, about four-fifths of the civil legal needs of the poor and two to three-fifths of the needs of middle-income individuals, remain unmet.<sup>2</sup>

Although the American legal system of legal aid and cost allocation differs significantly from the European model of securing legal assistance and access to justice, the background of the problem remains the same. Legal problems of many people all around the world are left unresolved because they cannot afford access to professionals, providing advice on legal matters. At the same time, it is an old rule that legal problems not solved on time show tendency of gradual escalation, thus becoming more complex and consequently more expensive for resolution.

<sup>1</sup> Assistant Professor, Department of Civil Law and Civil Procedure, Faculty of Law, University of Osijek; Director of the Legal Clinic 'OSIJEK PRO BONO', Osijek, Croatia.

<sup>2</sup> DEBORAH L. RHODE, ACCESS TO JUSTICE 3 (2004).

## Corresponding author:

Zvonimir Jelinic, Assistant Professor, Department of Civil Law and Civil Procedure, Faculty of Law, University of Osijek; Director of the Legal Clinic 'OSIJEK PRO BONO', Osijek, Croatia.

E-mail: [zjelinic@pravos.hr](mailto:zjelinic@pravos.hr)

Nowadays, access to justice is in the focus of many scholars and justice system policy-makers when they deliberate upon different issues, usually those arising out of constitutional guarantee on access to courts.<sup>3</sup> In its ordinary usage, the term 'access to justice' is a synonym for judicial protection, while from the point of view of an individual, the term refers to the right to seek a remedy before a court of law or other competent authorities which perform the function of dispute settlement.<sup>4</sup> In one of its landmark judgements, the ECHR stated that the right of access to court must not be theoretical or illusory, but practical and efficient.<sup>5</sup> The ECHR recognized that making this right effective can be hard to achieve without securing access to legal aid. The principle of access to justice enshrined under Article 6(1) of the European Convention on Human Rights compels the State to provide for the assistance of a lawyer when such assistance proves to be indispensable for access to court, either because legal representation is compulsory or because of the complexity of the procedure of the case.<sup>6</sup>

Nevertheless, it would be wrong to perceive that nowadays access to justice is limited only to the issue of access to courts. The truth is that access to courts is the very core element of the access to justice as a human rights requirement. On the other hand, it is impossible to neglect that the complexity of legal systems poses an obstacle to numerous people who do not possess knowledge about law and procedures for protection of their rights before all other State and private bodies that are vested with jurisdictions to decide on citizens' rights and obligations. As pointed out in the document which evaluates the implementation of the old Croatian Free Legal Aid Act (hereinafter FLAA; the one from 2008), the research has shown that ordinary and poor people face massive amounts of simple legal problems that they are unable to deal with by themselves, but can be solved quickly by qualified advisers.<sup>7</sup> Therefore, the issue of access to justice should be perceived in a broad sense, in part because it seems that legal systems have a tendency of becoming more and more sophisticated.

Croatia is a good example of a State with a complex legal system. During the time of its accession to the European Union (hereinafter EU), Croatia had to absorb more than 100,000 of pages of EU rules into its national legislation.<sup>8</sup> The result was harming for the justice system of Croatia. Nowadays, it is hard to find a person who practises law and thinks positively about the consistency of the legal system. If professionals find legal system overly complicated, we can only imagine how hard it may be for an ordinary citizen, without any legal knowledge, to understand and deal with their legal problem(s).

Not only has Croatia's accession to the EU resulted in legislative disorder and normative framework overgrowth (which apparently started to affect the rule of law), but it has also resulted in disintegration of the old Yugoslav system of legal aid which relied on several different legal aid schemes. Before the change of the political system, the legal aid schemes in the sector of non-criminal legislation existed in various laws. The Code of Civil Procedure authorized the courts to waive the court fees and to award free

<sup>3</sup> The guarantee of access to courts contained in the Article 6(1) of the European Convention on Human Rights (hereinafter ECHR) was replicated in Article 29 of the Croatian Constitution which reads as follows: Everyone shall be entitled have his or her rights and obligations, or suspicion or accusation of a criminal offense decided upon fairly before a legally established, independent and impartial court within a reasonable period.

<sup>4</sup> FRANCESCO FRANCONI ed., *ACCESS TO JUSTICE AS A HUMAN RIGHT* 64–138 (Oxford University Press 2007).

<sup>5</sup> See *Airey v Ireland* (Judgement of 9 October 1979), para 24.

<sup>6</sup> *Id.* at para 25.

<sup>7</sup> JON T. JOHNSEN, GEORG STAWA AND ALAN\_UZELAC, *EVALUATION OF THE CROATIAN LEGAL AID ACT AND ITS IMPLEMENTATION* 22 (Oct.–Dec. 2010).

<sup>8</sup> This is very often stated by one of Croatia's most famous law professors and Croatian Academy member Professor Jakša Barbić who regularly points out that Croatian legal system lacks consistency; See, e.g., <http://www.nacional.hr/gost-kolumnist-jaksa-barbic-drustvo-koje-izgraduje-pravni-sustav-a-nema-ustaljeni-sustav-vrijednosti-izlaze-se-opasnosti/> (last visited Mar. 22, 2017).

representation to individual parties<sup>9</sup>; the Act on Legal Profession empowered the Croatian Bar Association to appoint a lawyer on a pro bono basis (this scheme is still operational). The Law on Asylum regulated free legal aid for asylum seekers (the Act on International and Temporary Protection now regulates this field of law).<sup>10</sup> Various other statutes also contained provisions on free legal assistance, for example, in the area of labour and administrative proceedings, etc.<sup>11</sup> Besides, during the communist regime, the judges were required to provide free legal assistance in the court building on certain days of the month. The judges drafted statements of claims, appeals and other types of briefs, free of charge, for all indigents who showed up with their legal problems.

Such a disintegrated scheme of legal aid in civil matters, inherited from the past legal regime, came into focus of the EU in the period of Croatia's accession. In one of its progress reports, the EU suggested that there is a need to introduce an integrated legal aid system for both criminal and civil proceedings.<sup>12</sup> Although this kind of proposal had its own high points, because an integrated system has many advantages over a system based on many different and uncoordinated schemes, this proposal was not accepted by the government. It is because continuing to work on an integrated legislative scheme would not only be time-consuming but would also consequently delay the enactment of the new law.<sup>13</sup>

The first Croatian FLAA came into existence in the year 2008.<sup>14</sup> Due to many of its shortcomings that came to light during its application, it was modified twice—once by the Constitutional Court in 2011 when it annulled several provisions of the FLAA, grounding its decision on the researched case laws of the ECHR. The second amendment was the product of legislators when they amended the FLAA to comply with the findings of the Constitutional Court.<sup>15</sup> Later, it turned out that the FLAA needs to be improved again to raise its practicality and functionality. The new FLAA, the one that in its original version is still in force, was delivered in late 2013 and came into effect on 1 January 2014.<sup>16</sup>

As correctly recognized by the European Commission against Racism and Intolerance (ECRI) in 2015, the most significant improvement in the new FLAA lied with the fact that access to the so-called primary legal aid was further simplified and eased.<sup>17</sup> The means test was lowered, and the overall procedure for obtaining legal aid was simplified as compared to the previous law.<sup>18</sup> Some old concerns remain, mainly about the funding of the system. Namely, without continuous and increased financial support allocated to the providers of the free legal aid, the scheme will not function properly.<sup>19</sup>

This stance can be easily verified just by taking a closer look at the data provided in the Report of the European Commission for the Efficiency of Justice. According to this report, money spent per capita on

<sup>9</sup> Articles 172–77 of the Code of Civil Procedure (Official Gazette nos 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011, 25/2013, 89/2014). These articles were deleted or amended with subsequent amendments to the Code of Civil Procedure in 2011 and 2013, following adoption of the new FLAA.

<sup>10</sup> See Article 60 of the Act on International and Temporary Protection (Official Gazette no. 70/2015); unofficial translation is available at <http://www.refworld.org/docid/4e8044fd2.html> (last visited Sept. 4, 2017).

<sup>11</sup> JOHNSEN ET AL., *supra* note 7, at 18. Details on every particular scheme can be found in the referenced document (pp. 18–22).

<sup>12</sup> COMMISSION OF THE EUROPEAN COMMUNITIES, COMMISSION STAFF WORKING DOCUMENT: CROATIA 2006 PROGRESS REPORT 9, Brussels, 8.11.2006 SEC(2006) 1385 {COM (2006) 649 final}.

<sup>13</sup> This information was found in JOHNSEN ET AL., *supra* note 7, at 19.

<sup>14</sup> FLAA (Official Gazette no. 62/2008).

<sup>15</sup> See Decision of the Croatian Constitutional Court of 6 April 2011 (summary available at <http://judcoop.eu.europa.eu/data/?p=data&idPermanent=84>) together with the Law on Amendments to the FLAA (Official Gazette no. 81/2011).

<sup>16</sup> FLAA (Official Gazette no. 143/2013).

<sup>17</sup> See ECRI Conclusions on the Implementation of the Recommendations in Respect of Croatia Subject to Interim Follow-up adopted on 18 March 2015 6 (CRI/2015/22).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

legal aid in Croatia is far below than that of the European average.<sup>20</sup> Another distressful piece of data concerns the decrease of the approved public budget allocated to legal aid over time (2010–14), although some other data show that the risk of poverty and social inclusion among Croatian citizens has not been reduced.<sup>21</sup>

In the sections that follow, we shall discuss the problem of availability of free legal aid in Croatia from two perspectives. First, it is necessary to briefly draw attention to the issue of lawyers' monopoly. One recent decision of the Croatian Constitutional Court will help diagnose and understand the problem from the perspective of access to justice. Second, we shall point out contemporary importance of the clinical legal education for securing access to justice in Croatia.

As we will see later, the development of clinics at law schools in Croatia is important from an educational perspective. The fact that the FLAA recognizes legal clinics as legitimate providers of primary legal aid opens up the scope for establishing robust and capable clinical programmes that will address the needs of indigents who might not be able to get legal aid elsewhere.

## **Lawyers' Monopoly on Rendering Legal Services v. the Need to Foster Access to Justice**

Similar to Germany, Croatia has a long history of regulation of the legal profession and legal aid providers. Basically, it means that all activities concerning the provisions for legal services must fit in the existing normative framework. The Criminal Code still contains a provision which provides that whoever is engaged in offering legal aid for reimbursement shall be punished by imprisonment not exceeding a period of six months.<sup>22</sup>

Before the FLAA was enacted, Croatian non-governmental organizations (NGOs) and legal clinics operated without legal authorization to provide legal advice and legal assistance in administrative and out-of-court proceedings. In case someone needed court representation, NGOs and legal clinics would arrange and pay for legal representation that was undertaken by a licensed lawyer, or they would help the client to apply for legal aid using the available legal aid schemes. The Croatian Bar Association has always regarded such an activity as unconstitutional since Article 27 of the Croatian Constitution provides that members of the Bar, an autonomous and independent organization, shall provide legal aid to everyone in compliance with the law. In other words, Croatian Bar Association from the very beginning argues that only Bar members, that is, licensed lawyers, should have the right to provide legal aid, irrespective of the form of legal aid in question.

In 2003, the Code of Civil Procedure was amended and legal representation by lawyers was made mandatory in all civil litigations. Such a stance of the legislators was explicated with the need to securing the quality of legal representation and advice to all people in need of legal services. While it is apparent that quality does relate to the quality of legal training, it is dubious to what extent it relates to the price

<sup>20</sup> See EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE, EUROPEAN JUDICIAL SYSTEMS: EFFICIENCY AND QUALITY OF JUSTICE 66–80 (CEPEJ Studies no. 23, Edition 2016, 2014 data). The report is available at <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%2023%20report%20EN%20web.pdf> (last visited Sept. 4, 2017).

<sup>21</sup> See *Id.* at 78 together with Eurostat, *Europe 2020 Indicators: Poverty and Social Exclusion* (data from March 2016), [http://ec.europa.eu/eurostat/statistics-explained/index.php/Europe\\_2020\\_indicators\\_-\\_poverty\\_and\\_social\\_exclusion](http://ec.europa.eu/eurostat/statistics-explained/index.php/Europe_2020_indicators_-_poverty_and_social_exclusion) (last visited Sept. 4, 2017).

<sup>22</sup> See Article 313 of the Criminal Code (Official Gazette nos 125/2011, 144/2012, 56/2015, 61/2015).

of legal services.<sup>23</sup> Namely, pro bono lawyers, NGOs and legal clinics provide their services free of charge, sometimes in collaboration.

The problem lies with the fact that in situations when legal representation by lawyers is mandatorily required,<sup>24</sup> people in need must resort to the licensed professionals who are then obliged to apply the policy of fixed fees. A fact that is worthy of attention is that the system of lawyers' fixed fees is mandatorily applied to all types of legal work, not only for in-court but also for out-of-court jobs and services. Essentially, this means that people in need of legal services, if unable to defend their case by themselves, must resort to professionals and cannot seek legal assistance elsewhere.

Fortunately, the Croatian Bar Association's views expressed in one of its constitutional complaints have not been confirmed by the Constitutional Court while analysing the constitutionality of the FLAA.<sup>25</sup> First, the Constitutional Court has recognized the right of the government to regulate the provision on legal services for the poor in such a way that is acceptable to the State. Second, the finding of the Constitutional Court that the legal aid scheme administered by the Bar Association under the Law on the Legal Profession<sup>26</sup> is clearly deficient for securing the right of access to justice.

The Law on Legal Profession provides that the Bar Association organize free legal assistance for the victims of the Homeland War as well as for other deprived persons in resolving their legal issues that these individuals realize as a matter of right connected with their status. One of the important features of this scheme is that the lawyers are entitled to provide free legal assistance only when the Bar Association assigns them to undertake such an activity.<sup>27</sup>

Due to the fact that the number of people in need of free legal services clearly exceeds the capacity of the Bar Association's legal aid scheme, the Constitutional Court concluded that the fact that the FLAA authorizes NGOs and legal Clinics to provide legal aid to indigents has not led to disproportionate limitation of the autonomy of the legal profession, the autonomy which has its basis in the Constitution of the Republic of Croatia.<sup>28</sup>

## The Mention of Legal Clinics in the Free Legal Aid Act

The FLAA<sup>29</sup> integrates different provisions relating to forms and scope of legal aid. It determines the right to counsel and the procedure for obtaining legal aid, grants authorization to NGOs, State bureaus and legal clinics to provide legal aid, prescribes means and merits test and sets the framework for system financing as well as the rules concerning administrative supervision of the providers of legal aid. According to Article 3 of the FLAA, the primary goal of the FLAA is to facilitate equal justice under law and

<sup>23</sup> See, e.g., EU Commission communication of 9 February 2004 entitled *Report on Competition in Professional Services* [COM (2004) 83 final—not published in the official Journal]; document available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A123015> (last visited Sept. 4, 2017).

<sup>24</sup> Tables and explanations about lawyers' monopoly on provision of legal services and legal representation in Council of Europe member states can be found in EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE, *supra* note 20, at 158–64.

<sup>25</sup> See The Decision of the Croatian Constitutional Court, (2011) No. U-I-722/2009 (Apr. 6, 2011) together with Article 6 of the Law on the Legal Profession (Official Gazette nos 9/1994, 117/2008, 50/2009, 75/2009, 18/2011) which clearly authorizes the Bar Association to initiate legal proceedings in all cases of unauthorized legal assistance, unless otherwise determined by law.

<sup>26</sup> See Article 21 of the Law on the Legal Profession.

<sup>27</sup> See Article 21 of the Law on Legal Profession together with paragraph 37 of the Attorneys' Code of Ethics (OJ 64/2007, 72/2008).

<sup>28</sup> See *supra* note 17, Decision no. U-I-722/2009 of 6 April 2011, para 19.

<sup>29</sup> FLAA (Official Gazette no. 143/2013).

access to courts and other bodies which adjudicate on the rights and obligations of Croatian citizens and foreigners.

For this article, it would be needless to start to explain every single detail about the FLAA. However, explaining a few of its main features that serve as the basis for clinical activities is inevitable.

One of the features that make the Croatian FLAA rather unique is that it contains the definition of legal clinics. According to the FLAA, a legal clinic is an organizational unit of an institution of higher education offering university courses in the field of law which provides primary legal aid in accordance with its memorandum of association.<sup>30</sup>

The classification of legal aid into two different groups, primary and secondary legal aid, is vital for the determination of powers given to the providers of legal aid.

Same as the FLAA from 2008, the newer FLAA from 2013, apart from lawyers, opens the ground for State departments, NGOs and law schools' legal clinics to provide people in need with primary legal aid.<sup>31</sup> The concept of primary legal aid comprises several forms of legal assistance: general legal information, legal advice, legal assistance in drawing up documents before bodies vested with public authority and ECHR and international organizations in accordance with international agreements and statutes on the work of those bodies, legal representation before bodies vested with public authority and legal aid in out-of-court mediation proceedings.<sup>32</sup> Unlike primary legal aid, secondary legal aid comprises certain types of legal assistance inherent to representation in judicial proceedings. It includes legal advice, drawing up documents for peaceful settlement of disputes between workers and employers, representation before courts as well as legal aid in mediation proceedings. It also includes exemption from payment of court fees and litigation costs.<sup>33</sup>

Apparently, the legislature has opted for a strict division of competencies of lawyers and all other legal aid providers. This concept has its roots in the 2008 FLAA. It has limited the ability of NGOs and legal clinics to provide legal assistance in judicial proceedings in line with the German concept of *Advokatenzwang* [all parties who wish to bring a lawsuit have to employ a lawyer] which is evidently present if we take a look at the wording of Article 89(a) of the Croatian Code of Civil Procedure.<sup>34</sup>

Limiting the powers of NGOs and legal clinics to providing only certain types of legal aid has not proved to be problematic so far.<sup>35</sup> In case it is found that a client needs full legal representation, it should submit the application to the State departments having jurisdiction to decide on legal aid approval. Besides, NGOs and students working in clinics can always help with the filling of different forms and ready-made statements. Nevertheless, the problem may eventually arise for people who do not belong to the group of poor people, because usually they will not pass the means test prescribed by the FLAA, while at the same time the projected costs of solving their legal problem may well exceed their financial capacity.<sup>36</sup> Also, the issue of the costs of proceedings cannot be neglected. In Croatia, the costs can get

<sup>30</sup> Article 4 para 8 of the FLAA.

<sup>31</sup> Article 6 of the FLAA. Both NGOs and law clinics must be registered with the Ministry of Justice.

<sup>32</sup> See Article 9 of the FLAA.

<sup>33</sup> See Article 12 of the FLAA.

<sup>34</sup> The relevant provision of the Code of Civil Procedure states as follows: Only an attorney may represent a party as an agent, if the law does not prescribe otherwise.

<sup>35</sup> It is known that regulation concerning student representation before the courts is very different in the United States. In the US court, rules allow students to appear as counsels, sometimes even as defense counsels in a criminal matter or as counsels in a matter before the state courts of appeal. Naturally, when students appear as counsels, they are supervised by licensed practitioners, often clinical professors. See, e.g., Rule 31.15 of the Iowa Court Rules. The rules are available at <https://www.legis.iowa.gov/law/courtRules/courtRulesListings> (last visited Sept. 4, 2017).

<sup>36</sup> See more about it in JOHNSON ET AL., *supra* note 7, at 28.

very high, especially the costs relating to the price of lawyers' and court experts' services. It is not uncommon that the costs of proceedings exceed the value of the dispute in question.

For the people who serve as clinical directors, one of the most relevant provisions of the FLAA is the one that relates to the financing of legal clinics. The FLAA prescribes that the funds for providing legal aid come from the State budget.<sup>37</sup> Unfortunately, the funds keep decreasing every single year, although they are vital for the operation of legal aid providers, such as NGOs and legal clinics.<sup>38</sup>

Legal clinics are entitled to apply projects to the Ministry of Justice every year after the Ministry of Justice announces project competition on its website. Funds that can be approved for a single project are limited to approx 10 per cent of the overall annual funding.<sup>39</sup>

The project application has to be accompanied by many different forms, and it is of utmost importance to ensure that the law school representative verifies all needed documents. The law provides that legal clinics are obliged to submit a report to the Ministry of Justice once in a year, at the latest by 31 January.<sup>40</sup> The reports are then examined and approved by the ministry.

It is important to understand that legal clinics in Croatia do not possess a legal personality, but they operate within law schools as separate units having the primary goal to provide people with different forms of primary legal aid. Also, NGOs and clinics are not obliged to carry out the means testing of every individual, as happens with the State departments that approve secondary legal aid usually in the form of court representation or exemption of court fee and costs.<sup>41</sup> Eventually, when clinics are burdened with a large number of cases, they can ask each client to inform the clinic about his or her financial situation, so that the Clinic can favour those persons who are unable to meet the costs of legal aid without endangering their family and basic human needs.

There is an ongoing discussion on how to ensure better quality of legal services rendered by the legal clinics. Namely, clinical jobs are similar to the activities conducted by licensed lawyers, and it is of utmost importance to ensure that the quality of pro bono legal services corresponds to the same or similar standards applicable to the lawyers. The latter is important not only for the clients who seek legal advice but also for the reputation of the clinics as centres of legal aid. It is also important for students since they must learn about the need to maintain high level of diligence and professional responsibility when providing legal services.

One way of securing the quality of legal services provided by the clinic is to facilitate cooperation with experienced lawyers and professors who would be willing to check and confirm the quality of students' briefs. For example, this is the approach utilized by the Legal Clinic 'OSIJEK PRO BONO'. It seems that the same model of quality assurance is also applied by some other clinics in Europe, for example, the Legal Clinic at the University of Freiburg.<sup>42</sup>

Fortunately, the insurance against malpractice is cheap, and law schools which run clinical projects regularly contract insurance for malpractice with the insurer that offers this kind of professional liability insurance.

<sup>37</sup> Article 35 of the FLAA.

<sup>38</sup> The newest information from the Ministry of Justice website indicates that approx €90,000 is secured for 2017 project applications.

<sup>39</sup> See information on the Ministry of Justice Free Legal Aid website, <https://pravosudje.gov.hr/besplatna-pravna-pomoc/6184> (last visited Sept. 4, 2017).

<sup>40</sup> See Article 44 of the FLAA.

<sup>41</sup> See Article 10 of the FLAA.

<sup>42</sup> See, e.g., the web page of Freiburg Legal Clinics (Anleitende Rechtsanwälte und Rechtsanwältinnen), <http://www.legalclinics.uni-freiburg.de/> (last visited Sept. 4, 2017).

At the moment, three law schools are providing legal assistance to the poor through their clinical units: Zagreb, Split and Osijek. Given the fact that we have only four law schools in Croatia, we could say that clinical education is on the right track, thereby not necessarily implying that there is no further scope for numerous other improvements.

## **Legal Clinics: Between the Need to Reform Law Study Programmes and to Secure the Provision of Free Legal Aid for the People in Need**

There is a long discussion about what is and what should be the primary goal of clinical legal education and how does it relate to access to justice. As pointed out by Lousine Hovhannisian, under normal conditions, law schools in Europe take the responsibility for teaching the content of law, but leave the practice related study to apprenticeships, where practising lawyers and judges impart information about how to practise law, often in unstructured settings such as law offices and courts.<sup>43</sup> Currently, Croatian law provides that in order to join the Bar, besides passing a Bar exam, a law graduate has to practise for at least three years in a public prosecutor's office, law office, public notary's office, court or at least four years on any other legal jobs.<sup>44</sup> My opinion is that it is highly likely that the model of apprenticeship will become even more rigorous in the Croatian market for legal services. Namely, it faces enormous pressures as a consequence of apparently too high enrolment quotas for legal studies and very low drop-out rate. Fresh graduates often have no option but to do their best to find a law office in which they will work and earn their qualification for accessing the Bar exam.

It would be ironic to ask why law schools should emphasize more on the development of clinical legal education if there already exists a mechanism that serves the function of teaching practical skills to law graduates. Also, one should not underestimate the existence and the value of numerous other ways of imparting practical legal skills such as moot courts, practical exercises and simulations, court visits and likewise. However, one should be aware that clinical legal education is significantly different from other models of acquiring practical skills. For example, from the students' perspective, by meeting clients and working on their cases, students come to understand how the law affects people's lives, both positively and negatively.<sup>45</sup>

The added value of clinical legal education is also apparent from the law school perspective. Croatian law schools are public institutions of higher education financed from the State budget. Their accountability towards the society that provides funds for their functioning should be one of the priorities in their policies. Undoubtedly, students working under the supervision of academic mentors and licensed practitioners can help a lot by addressing the needs of people who are in need of legal assistance but are unable to pay for its costs. The experience and skills that students learn by meeting clients and helping them understand their legal problems are of tremendous value. In the case of huge demand for free legal assistance, the educational component comes as collateral to the primary aim of clinical activities, especially if we bear in mind the legal notion of legal clinics as set by the FLAA—securing effective access to justice in the field of primary legal aid.

Nevertheless, when arguing what should be the primary goal of clinical legal education, we cannot neglect the fact that for many students getting involved in legal clinics feels like reforming the way they

<sup>43</sup> See L. HOVHANNISIAN, CLINICAL LEGAL EDUCATION AND THE BOLOGNA PROCESS 6–7 (PILI Paper no. 2, December 2006).

<sup>44</sup> See Article 48 of the Law on the Legal Profession.

<sup>45</sup> See HOVHANNISIAN, *supra* note 43, at 10.



receive their education. Being right about the slow pace of the change in educational and apprenticeship policies does not mean that clinics do not possess incredibly powerful educational component capable of influencing the reform of the entire legal education. The need to improve legal education in Croatia is evident. Law schools' curricula are severely outdated, and there are many other serious problems, mostly concerning the way law schools anticipate the future situation and possible distortions in the market for educational and legal services. For example, it has been apparent that the interest in studying law decreases for some time by now as well as it is tremendously hard for law graduates in Croatia to find employment.

In the Croatian context, it seems that changes do not come from above (from policy-makers), but rather from the bottom. Therefore, choosing the promotion of access to justice to be the primary goal of the clinical legal education might be the best way to go because these projects deeply integrate with society and student population.

Apropos the evaluation of student participation in the work of clinics, different approaches have been developed by Croatian law schools so far. For example, the student participation in Zagreb Legal Clinic is evaluated as equivalent to six hours of work per week during one semester which equals 10 ECTS (European Credit Transfer and Accumulation System) credits.<sup>46</sup> At the same time at Law School in Osijek, only a small number of fifth-year students can earn credits for working in the clinic since every initiative to amend the law study programme has failed so far due to the lack of consensus among the members of the faculty council on what should change in the study programme. As Rekosh observes, providing clinics with official status within a curriculum is important because unless clinics become an official part of the law faculty's curriculum, they cannot receive the resources they need from the law schools.<sup>47</sup>

Fortunately, clinical experience from Osijek and other places shows that students are less concerned with credits than with developing their practical skills and helping people in need. The truth is that the sensibility demonstrated by Croatian students working in clinics makes us very optimistic about the future of legal profession and policy-making in the field of legal aid in Croatia.

## Conclusion

Legal clinics in Croatia evolved soon after the enactment of the FLAA in 2008. Earlier attempts to bring legal clinics into life, some of which were supported by foreign donors, were successful but lasted only for a short period.<sup>48</sup>

Someone's idea to make a notion of legal clinics in the FLAA has apparently helped to activate the clinical potential within the law schools across Croatia.

Nevertheless, many problems remain. The first issue relates to the overly bureaucratic regime that surrounds clinical legal education, both in legislation and practice.

In order to apply to the ministry with a project application, it is necessary to fulfil and certify many documents, some of which make a little sense from the practical point of view. For example, in case a

<sup>46</sup> See Barbara Preložnjak, *Clinical Legal Education in Croatia: From Providing Legal Assistance to the Poor to Practical Education of Students*, 19 INT'L J. OF CLINICAL LEGAL EDUC. 373, 373–81 (2013).

<sup>47</sup> See Edwin Rekosh, *The Possibilities for Clinical Legal Education in Central and Eastern Europe*. Paper presented at the meeting of law faculty deans in Budapest (1998, May).

<sup>48</sup> At the Law School in Osijek, the very first Croatian live client law clinic was established in 2003. It continued to operate for a couple of years before it was dissolved due to lack of funding and effort of the professors for whom it became very hard to combine all duties and responsibilities within a regular job position.

project is won, the law school has to provide the Ministry of Justice with a promissory note that serves as a guarantee that the unused funds for clinical activities shall be returned to the State budget after the completion of the project.

At the same time, the current position of legal clinics (as separate units of the law schools) can be very problematic because every single and even the smallest payout for implementation of clinical activities needs to be signed and verified by the person authorized to represent the law school—usually the dean. It would not be impossible to make the clinics independent, for example, by setting up an NGO which will be joined by students and faculty, but on the other hand we must be aware of the fact that in the latter case, all the advantages of having one clinic within the law school, for instance, availability of faculty resources and proximity to the students, may be irretrievably lost.

Besides, the need to amend the FLAA in the part which deals with project application is clearly visible. It would make much more sense if the FLAA prescribed longer project periods, for example, three-year instead of six months or one year, because legal clinics need more stable financing and a certain guarantee that their operations shall be supported on a long-term basis. The latter is also important from the perspective of access to justice. Only long-term and stable operations and activities result in the improvement of the system of legal aid.

The problem is also evident with the integration of clinics into the law schools' curricula. That is the process which does not go smoothly. Individual faculty members often misunderstand the actual value of legal clinics for students and society which is in desperate need of free legal services. Those who did not experience the work in practice can have a lot of problems with properly understanding how intensively legal problems can affect people's lives, especially of those people who are unable to pay for legal assistance. What faculty members have to understand is that there is much space for further improvements of clinical legal education and activities because there are so many students ready to work in clinics and at the same time so many poor people without any legal knowledge. For them, the students' help and assistance are often of vital importance for proper understanding of their legal position. Therefore, in future, it will be necessary to work on overcoming the dichotomy between theory and practice, the duality which is still so obviously present.<sup>49</sup>

Until legal clinics start to enjoy official status within the curriculum, they will have tremendous problems with obtaining finances for their activities. That leads us to another conclusion; securing the right to legal counselling appears to be impossible without employing all resources that are available to Croatian law schools.

As we could see, clinical legal education in Croatia faces many challenges. To fulfil the goal of full integration of clinical activities into law study curricula, it will be necessary to clear many obstacles. Applying the American model of full integration of clinics into law schools would make legal clinics stronger and, most importantly, financially sustainable. At present, legal clinics still tend to operate as pro bono projects that are entirely dependable on enthusiasm and dedicated work of certain individuals. On the other hand, personal activism and volunteerism without sustainable funding sources are like a bladeless sword. The development of activities and covering the needs of indigent people is a process that needs long-term support from various sides: faculties of law, local government, the State as well as from all other interested actors who wish to take part in the process of further development of Croatian legal aid system.

Fortunately, legal clinics in Croatia have quickly earned cult status among students, and this remains the primary reason why one should be optimistic about the future perspectives of clinical legal education in Croatia.

<sup>49</sup> In Croatia, it is not possible to practise and teach law at the same time.