



## Pro Bono Practices and Opportunities in Georgia<sup>1</sup>

### INTRODUCTION

Georgia's legal system has been transforming since it gained independence at the end of the twentieth century. Prior to that, pro bono culture in the legal profession was nonexistent. With the gradual progress made in the development of the legal system, strengthening pro bono initiatives has also become an important part of the reform agenda. To date, most pro bono opportunities are offered by non-governmental organizations (“NGOs”), university law clinics and law firms. However, these practices exist in a context where no state regulations or voluntary standards are in place to support pro bono in Georgia.

### OVERVIEW OF THE LEGAL SYSTEM OF GEORGIA

#### The Judicial System

The Constitution of Georgia is the supreme law. It provides for the separation of powers among the legislative, executive and judicial branches of the government. The judicial system consists of the Constitutional Court of Georgia and courts of general jurisdiction. The Constitutional Court of Georgia is governed by the Organic Law of Georgia on the Constitutional Court and chiefly hears cases regarding compliance with laws and bylaws that are adopted by public agencies with the provisions of the Constitution.

Pursuant to the Organic Law of Georgia on the Courts of General Jurisdiction, courts of general jurisdiction hear cases from all fields of law. However, there can be specialized panels of judges within these courts that hear criminal, civil or administrative cases. The courts of general jurisdiction have three instances: (1) the regional (city) courts are first instance courts; (2) the Tbilisi and Kutaisi courts of appeal are second instance courts and (3) the Supreme Court of Georgia is the third and final instance court. Members of the Supreme Court are elected by Parliament for ten years, whereas judges of the courts of appeal and the regional (city) courts are appointed by the High Council of Justice.<sup>2</sup>

#### The Practice of Law

Georgian legislation refers to licensed attorneys as “advocates”. All remaining persons who have legal education are usually referred to as “jurists”. Anyone of legal capacity may provide legal representation in the courts of first instance, but only “advocates” are authorized to do so in the court of appeal and the Supreme Court. Among the requirements to qualify as an “advocate” one must: (1) be a Georgian citizen; (2) have received higher legal education; (3) have passed one of the state bar exams; and (4) have at least one year of professional experience as a jurist or as a paralegal with an “advocate”. If a person meets these criteria, he/she must file the relevant documents with the Georgian Bar Association and take an oath. Admission to the Bar means that the person may start his/her practice as an “advocate”.

A legal education is an essential requirement to become a licensed attorney in Georgia. Proof of legal education is required to be able to sit the bar exam. There are two types of exams: general and specialized. The specialized exam can be either in civil or criminal law. The general exam tests both. Passing the general bar exam allows the attorney to practice in all areas of law, whereas attorneys who have passed specialized exams may practice only in that area of law.

Licensed attorneys are subject to the Law of Georgia on Advocates and the Professional Ethics. This Law provides that an “advocate” is a member of a free profession and must comply only with the law and the

---

<sup>1</sup> This chapter was drafted with the support of BGI Law Firm.

<sup>2</sup> The High Council of Justice is a body which oversees the entire judicial system. For more, see at: <http://hcoj.gov.ge/en/home> (last visited on September 4, 2015).



professional ethics regulations. As of June 2015, there are 4,021 licensed attorneys in Georgia which has a total population of 3.7 million inhabitants.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### State-Subsidized Legal Aid

#### The Right to Legal Assistance

Under Article 42 of the Georgian Constitution, the right to defense in the courts is guaranteed for any person. The same right is established under Article 38 of the Criminal Procedure Code of Georgia whereby all persons accused of a crime have the right to be represented by an “advocate”. However, state-funded legal representation is provided only to certain categories of persons that vary in criminal or civil/administrative cases. In general, the provision of state legal representation is largely dependent on the financial means of the applicant, and such applicant being a permanent resident of Georgia. However, if there is an instance where a mandatory defense is required in a criminal proceedings (please see section c below), then any person without an attorney, regardless of nationality and financial status, may receive state-funded legal representation.

#### State-Subsidised Legal Aid

Pursuant to the Law of Georgia on Legal Aid of 2007, the Georgian State provides state-sponsored legal aid through the Legal Aid Service.<sup>3</sup> In general, this institution provides two types of services: (1) legal advice (consultation) which it provides to any interested person and (2) legal aid (i.e. drafting legal documents and court representation) which it may provide to categories of people who are unable to afford such a service or, in a few instances in criminal proceedings, where a mandatory defense is required under the law. The criteria to qualify for the latter are provided under the legislation and includes the indigent population which is determined according to the state database of socially vulnerable persons. To be eligible, a person has to reside legally and permanently in Georgia (i.e. be a permanent resident of Georgia).

More specifically, under the legal aid criteria, a person is considered to be unable to pay for legal services if s/he is either: (1) a socially vulnerable person and his/her ranking point in the database is 70,000 or less,<sup>4</sup> or (2) a socially vulnerable person and his/her ranking point in the database is 100,000 or less and s/he is either: (a) a member of a family with three or more children under the age of 18; (b) a veteran of war or the military forces; (c) a person with disabilities who is under the age of 18; (d) an adult with distinct or significant disabilities; (e) a person with distinct, significant or moderate disabilities, if this disability existed from childhood; (f) an orphan under the age of 18; or (g) an internally displaced person as a result of the Russian military aggression against Georgia.

However, in exceptional cases, where a person who is not included in the database is determined to be unable to pay for legal services or where some other specific qualifying circumstances exists, that person may receive legal assistance from the Legal Aid Service.

---

<sup>3</sup> See at: <http://www.legalaid.ge/index.php?action=0&lang=eng> (last visited on September 4, 2015).

<sup>4</sup> Under the Georgian legislation, social assistance is provided to socially vulnerable (indigent) families (households). That status is determined in accordance with a Government-adopted methodology for assessment of social-economic conditions of families. The methodology considers a myriad of factors and contains complex algorithms that are both social and economic in nature. On the basis of this assessment, a certain number of points is assigned to each household. The lower the number, the more severe is that household’s social vulnerability and, accordingly, they may be entitled to broader state assistance programs. The information on households and their assigned points are registered in a database held by the Ministry of Labor, Health and Social Affairs and is used by various state institutions for the purposes of their social programs.



## Legal Assistance in Criminal Cases

In criminal proceedings, the state will appoint a defense attorney in two main instances: first, when the defendant is indigent according to the state criteria and, second, when a mandatory defense must be provided. The first instance has been discussed above. Unlike the first, in the second instance, any person without any distinction based on nationality, residency or financial means may receive state-funded legal representation in a determined set of cases in order to guarantee the criminal procedural rights of all. These cases include where a defendant without an attorney: (a) is a juvenile; (b) does not speak the language of the criminal proceedings; (c) has a physical or mental disability that prevents him/her from defending himself/herself; (d) has had a court order (ruling) ordering mental examination rendered in respect of them; (e) is accused of a crime for which the Criminal Code of Georgia provides for life imprisonment as a punishment; (f) is in the process of negotiating a procedural agreement; or (g) is charged with a crime for which this Code provides for a jury trial.

## Legal Assistance in Civil and Administrative Cases

Historically, legal assistance has been provided only in criminal cases. However, since April 2015 the Legal Aid Service also provides legal aid for certain categories of civil and administrative cases. Such assistance is provided if the person cannot afford legal representation as per the criteria provided under the legislation and if the case is important and complex. There is however no official criteria to determine whether a case is important and complex.

The categories of civil and administrative cases that are eligible for legal aid include the following general categories: (1) family disputes (marriage, divorce, alimony, etc.); (2) inheritance disputes; (3) social allowance and pension; (4) rights of internally displaced persons; (5) healthcare issues and rights of patients; (6) social protection of families of veterans and persons who died in war hostilities; (7) the social protection of victims of political repressions; and (8) the social protection of persons with disabilities additionally, certain laws specifically note that the indigent persons may benefit from legal aid in cases involving amongst others: (1) a person with psychosocial needs when a court assesses whether to recognize him/her as a recipient of supported decision-making; (2) protection of victims of domestic violence; (3) compulsory psychiatric assistance when the person is to be placed in a hospital; (4) disciplinary proceedings of prisoners; and (5) administrative misdemeanors which as a penalty entail an administrative arrest.

## Alternative Dispute Resolution

There are a few notable alternative dispute resolution mechanisms available in Georgia. Among them are mediation services in juvenile justice and the inquiry functions of the Ombudsman of Georgia.

### Mediation in Juvenile Justice

The newly adopted Code on Juvenile Justice sets out the concept of mediation which is defined as a process of dialogue, led by a mediator, between a delinquent minor and a victim. According to the Code, the mediation is led and coordinated by an independent and qualified mediator. A legal representative, a psychologist, a social worker, a prosecutor and/or other persons may also participate in the mediation. The goal of the process is to reconcile the minor with the victim and to resolve the conflict. This measure may be applied if the state prosecutor decides that a delinquent minor should be diverted from court proceedings. Such mediation is not subject to a state fee or taxation.

### Ombudsman of Georgia

The Ombudsman of Georgia examines applications and complaints of citizens of Georgia, foreign citizens and persons without citizenship, legal entities established under private law, and political and religious associations, regarding actions or acts of state and local self-government authorities, public agencies and officials that violate the rights and freedoms provided under the Constitution and laws of Georgia. Such applications and complaints are not subject to any state fee or taxation and the Ombudsman's services are provided free of charge. The services may include inspection of the facts and making a recommendation to the state agency involved.



## PRO BONO ASSISTANCE

### Pro bono Opportunities

Pro bono opportunities in Georgia are in most part provided through law firm initiatives, NGOs, and university law clinics.

In recent years law firms have been taking more and more steps to develop a pro bono culture in the country. For instance, on June 27, 2014, some of the leading law firms, members of the Association of Law Firms of Georgia, signed the Pro bono Declaration<sup>5</sup> whereby they agreed to provide pro bono services in a more coordinated manner. Later, a memorandum of understanding (**MoU**) was signed between the Association and the Legal Aid Service of Georgia. According to the MoU, signatories undertook to provide legal representation in civil and administrative cases free of charge for, in particular, priority cases such as defending the rights of the disabled persons and victims of domestic violence.

Additionally, much of the pro bono opportunities in Georgia are provided by NGOs in both their field of specialization and beyond. Set out below is an indicative list of such services among others provided by NGOs. These opportunities are financed by international donors and partners of the organizations. In many cases the pro bono services are tailored to local priorities and the organizations' profiles.

Most recently, one of the fastest developing fields in this area has been university law clinics. At this point practically all major universities in Georgia have some type of a law clinic. According to unofficial advice from some of the universities, the law school students are required to participate in the clinics as a mandatory requirement for graduation with the law degree.

### Current State of Pro Bono

Despite these initiatives, so far, international standards and practices of pro bono are not well-established in Georgia. No regulations or general voluntary standards apply to pro bono work in Georgia. Further private initiative will be required to develop a pro bono culture in the country that is in line with the best practices of the world. The discussions as to what the State and the private sector may be able to do in this area are only the beginning.

### Pro bono Resources

#### Law Firms:

Association of Law Firms of Georgia – in the area of civil and administrative cases which are provided to it by the Legal Aid Service of Georgia – website: <http://alfg.ge/?lang=en> (last visited on September 4, 2015)

#### NGOs:

- Transparency International – Georgia – mainly in the area of administrative law relating to property rights and dismissal cases of civil servants – website: <http://www.propertyrights.ge/site/en> (last visited on September 4, 2015)
- Georgian Young Lawyers' Association - mainly in the area of human rights and other cases as determined under the criteria adopted by the organization - <https://gyla.ge/geo/news> (last visited on September 4, 2015)
- Article 42 of the Constitution – in nearly all fields provided mainly to vulnerable groups of the population – website: [http://www.servat.unibe.ch/icl/gg00000\\_.html](http://www.servat.unibe.ch/icl/gg00000_.html) (last visited on September 4, 2015)
- Anti-violence Network of Georgia – mainly in the area of domestic violence – website: <http://www.avng.ge/> (last visited on September 4, 2015)

---

<sup>5</sup> See at: [http://alfg.ge/archives/portfolio\\_page/declaration?lang=en](http://alfg.ge/archives/portfolio_page/declaration?lang=en) (last visited on September 4, 2015).



- Partnership for Human Rights – mainly in the area of human rights – website: <http://phr.ge/> (last visited on September 4, 2015)
- Human Rights Education and Monitoring Center – mainly in the area of human rights - website: <http://www.emc.org.ge> (last visited on September 4, 2015)
- Identoba – mainly in the area of LGBT rights – website: <http://identoba.com/> (last visited on September 4, 2015)
- Eurasia Partnership Foundation – in the area of consumer rights – website: <http://www.mkidveli.ge/2> (last visited on September 4, 2015)

Law School Clinics:

Free University of Tbilisi – various clinics in the areas of business, administrative, criminal and constitutional law – website: <http://freeuni.edu.ge/node/522> (last visited on September 4, 2015)

Professional Associations:

Georgian Trade Unions Confederation – in the area of labor rights – website: <http://www.eng.gtuc.ge/> (last visited on September 4, 2015)

September 2015

Pro Bono Practices and Opportunities in Georgia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.