PPJ 2015

PUBLIC AND PRIVATE JUSTICE 2015

Private Justice in Service of Public Goals? Outsourcing of Judicial Tasks and Functions – Blessing or Betrayal

COURSE MATERIALS

Dubrovnik, 8 – 12 June, 2015

IUC Inter University Centre Dubrovnik

Course directors:

Prof. Remco van Rhee (Maastricht)

Prof. Alan Uzelac (Zagreb)

Prof. Elisabetta Silvestri (Pavia)

Prof. Jon T. Johnsen (Oslo)

Prof. Paul Oberhammer (Vienna)

Prof. Vesna Rijavec (Maribor)

Prof. Burkhard Hess (Luxembourg)

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2015 PPJ Course and Conference, IUC Dubrovnik, 8-12 June 2015

PRIVATE JUSTICE IN SERVICE OF PUBLIC GOALS? OUTSOURCING OF JUDICIAL TASKS AND FUNCTIONS - BLESSING OR BETRAYAL

Conference outline

For its tenth anniversary, the PPJ Course and Conference focuses on the very core of the relationship between private and public justice. Today in many countries public justice is straining under excessive workload and huge backlogs. Even though access to justice presupposes access to courts, alternatives to conventional court proceedings are being explored and introduced in a number of jurisdictions. The civil courts in contemporary societies discharge diverse functions, from conflict-resolution to policy implementation. Adjudication may be the core job of courts, but the courts are sometimes also used for various, mainly administrative purposes. In some countries more, and in some countries fewer, civil courts assume important roles in a long list of activities: they hold public registers, appoint guardians, stamp payment orders and certify uncontested debt, deal with estates and cartel matters, conduct bankruptcy proceedings, deal with forcible execution of judgments and other titles, and oversee general elections – to mention only some typical examples. It seems that perceptions of what is an essentially judicial task and function differ, but one trend can be observed globally: the tasks and functions that were until recently discharged by courts are gradually being transferred to out-of-court services, often in the private sector. A similar transfer sometimes can be observed internally, where some tasks formerly entrusted to judges become the matter of occupation of the non-judicial staff in the courts (with or without a legal background) and automated data-processing systems, only loosely connected to the court structures.

The intention and purpose of the Tenth PPJ Conference is to evaluate the risks and benefits of this trend, comparable to a concept that in business is commonly called 'outsourcing'.

On the one hand, it should be evaluated whether and to what extent the outsourcing trend contributes to improvement of the quality of justice. Are out-of-court services, especially those provided by private actors, better and more efficient than the services of the traditional and conservative state judiciary? Are courts gaining more capacity by outsourcing less important judicial activities? Can the skills and experience of judges be used more effectively if judges transfer a part of their daily routines to other, less prominent court personnel (like clerks, secretaries or court counsellors) who can prepare everything and leave only the decision-making in the hands of the judges?

On the other hand, the speakers at the conference have to assess the limits and inherent risks of outsourcing of judicial tasks and functions to other actors in the public and private sector. Should the right to a trial by an independent and impartial tribunal prevent the outsourcing of some judicial functions? Should the activities that require specially trained personnel who are immune to political and economic pressures remain in the courts? Are the interests underlying the services that are provided commercially by private companies and the liberal professions compatible with the public interest that forms the underlying rationale of most judicial activities? Do such arrangement favour economically stronger and politically more powerful parties? And, finally, is the outsourcing of public justice to the private sector acceptable in terms of the social costs, or does it put at stake access to justice?

The speakers at the Tenth PPJ Conference will reflect on how the trend of outsourcing affects the situation in their countries and present their views regarding further developments, both nationally and

in comparison with the developments in other countries and regions. The impact of regional and global integration processes will also be discussed, in particular when exploring whether attitudes in relationship to the role and limits of private justice converge or not.

The thematic circles that will be discussed at the Tenth Public and Private Justice Conference are the following:

1. Replacing public justice with out-of-court dispute resolution mechanisms (pre-litigation ADR, arbitration and mandatory settlement attempts)

- Many policy documents and legislative acts, including those of the EU, encourage pre-trial attempts to settle disputes. Recommendations for the use of alternative dispute resolution methods are issued both with respect to individual and with respect to collective claims. Arbitration is also stimulated, and sometimes officially suggested to public bodies and state agencies.

2. Privatization of debt collection proceedings and enforcement

- Certification of uncontested debt by payment orders and similar judicial acts is increasingly being outsourced, either to private professionals (notaries, bailiffs) or to special central systems (see under 3). While enforcement of judicial decisions has traditionally belonged to the portfolio of the judiciary, reforms in some countries have transferred the enforcement of various types of claims to private bailiffs and/or financial and other agencies under the control of the executive branch of government.

3. Replacing procedural routines in court proceedings by automatic data processing

- Automated data-processing services (like the Austrian *Mahnverfahren* proceedings) are able to replace the traditional judicial processing of routine and repetitive cases. They also enable the users to effectively assert their claims outside and within the court proceedings. Generally, internet-based information systems and on-line dispute resolution systems make referral to the courts less necessary.

4. Displacement of non-contentious matters from court jurisdiction

- Non-contentious court proceedings (so-called voluntary jurisdiction) encompass various, mainly administrative tasks and functions that are also able to be outsourced. The trend of outsourcing is strong for example in regard to probate proceedings, estates and production of public documents, but also occurs in regard to the holding of land and company registers.

5. 'Internal outsourcing' – the transfer of judicial functions from judges to other actors

- In many courts, judges are expected to be experts in multi-tasking. Among other things required of them in some jurisdictions are: planning of the proceedings and administering litigation; drafting of decrees and judgments; imposing and enforcing fines; dictating protocols, dispatching letters and controlling service of documents; questioning of parties, experts and witnesses; calculating interests and feeding information into statistical databases. However, in order to make more effective use of expensive judicial work, various strategies of 'internal outsourcing' are available, either horizontally (by transferring simpler cases and small claims to other court professionals) or vertically (by relocating some of the tasks in all cases to clerks, assistants and court administration offices).

The draft programme of the 2015 PPJ Course and Conference will be published soon at http://alanuzelac.from.hr/text/iuc-course. We warmly welcome you to join us for a discussion of the above matters.

Alan Uzelac – uzelac@post.harvard.edu
C.H. (Remco) van Rhee – remco.vanrhee@maastrichtuniversity.nl

PRIVATE JUSTICE IN SERVICE OF PUBLIC GOALS?

Outsourcing of Judicial Tasks and Functions – Blessing or Betrayal

Programme 2015 * Tenth PPJ Course and Conference

Monday, June 8	Opening speeches
Registration (9.00 – 9.30)	Richard Marcus (Hastings, USA): Reassessing the Essential Role of Public Courts – the American Experience
Morning Session (9.30 – 13.00)	Bettina Nunner-Krautgasser (Graz, Austria): Franz Klein's Procedural Model and the Outsourcing of Judicial Tasks and Functions – Do Klein's ideas still meet modern requirements?
[Coffee break 11.00 – 11.30]	Bartosz Karolczyk (Warsaw, Poland): The Limited Trends in Developing Private Justice in Poland: Why is the Polish system of civil procedure still resistant to outsourcing of judicial functions?
	Ten years of PPJ – presentation and exhibition (photos, videos, multimedia)
Lunch Break (13.00 – 15.00)	Tanja Domej (Zurich, Switzerland): Trends of Outsourcing Judicial Activities in Switzerland
Afternoon Session (15.00 – 18.00)	Jorg Sladič (Ljubljana, Slovenia): The Argument for Choosing State's Judicial System or a 'Private' Outsourced Resolution of Disputes: a Practising Attorney's Point of View
	Srđan Šimac (Zagreb, Croatia): In-court Mediation as a Form of Outsourcing?
Tuesday, June 9	Rob Jagtenberg and Annie de Roo (Rotterdam, the Netherlands): From 'shadow of the law' to 'shadow of the settlement'?
Morning Session (9.30 – 13.00)	Elisabetta Silvestri (Pavia, Italy): 'Hello Arbitration, Goodbye Litigation': New Trends in the Italian Dispute Resolution System
[Coffee break 11.00 – 11.30]	Svetlana Zagainova (Yekaterinburg, Russia): Mediation in Russia – A Form of Outsourcing?
	Katharina Plavec (Vienna, Austria): Interpretation of Arbitration Agreements: Valid Arbitration Agreements as a Gateway to Private Justice
Lunch Break (13.00 – 15.00)	
Afternoon Session (15.00 – 18.00)	PPJ books – past, present and future (presented by Remco van Rhee)
	Viktória Harsági (Budapest, Hungary): Main Trends of Outsourcing of Judicial Functions in Hungary: Arbitration, Mediation and Notarial Order for Payment
	Tatjana Zoroska Kamilovska & Milka Rakočević (Skopje, Macedonia): Experiences with the Introduction of Private Bailiffs in Macedonia
	Marko Bratković (Zagreb, Croatia): The Costs of Privatization of Public Justice: a Comparison of Croatian, Slovenian and Austrian Systems of Enforcing Uncontested Debt

Wednesday, June 10 **Morning Session** (9.00 – 12.00) **Afternoon** **Study Trip** (12.30 – 22.30)	Daniel-Sédar Senghor (Dakar, Senegal): Private Justice in Service of Public Goals? Perspective of Public Notaries Aleš Galič (Ljubljana, Slovenia): Enforcement by Way of Private Penalties (Astreinte) in Slovenia: A Transplant Gone Wild Igor Medvedev (Yekaterinburg, Russia): Public Notaries and Their Functions in Contemporary Russia Alan Uzelac (Zagreb, Croatia): Limits of Private Justice? ... where Blessings Become Betrayal Afternoon: Boat trip to southern Elaphites, lunch and dinner included
Thursday, June 11 **Morning Session** (9.30 – 13.00) **Lunch Break** (13.00 – 15.00) **Afternoon Session** (15.00 – 18.00)	Walter Rechberger (Vienna, Austria): The IT-based Administration of Justice in Austria Maastricht students (led by Fokke Fernhout): Research on the E-courts in the Netherlands Emanuel Jeuland (Paris, France): Justice.com: an Example of Outsourcing of Civil Procedure John Sorabji (London, England): ADR and the Privatisation of English Civil Justice Magne Strandberg (Bergen, Norway): Norwegian Board System *Panel: Contribution of Legal Clinics to Avoiding Unnecessary Litigation*
Friday, June 12 **Morning Session** (9.30 – 13.00) **Lunch break** (13.00 – 14.00) **Afternoon Session** (14.00 – 17.00)	*Panel: The History of Outsourcing: Roman Law and Public/Private Forms of Justice* Henrik Held (Zagreb, Croatia): Functions of Notaries Public in Medieval Ragusa Ivan Milotić (Zagreb, Croatia): Private Dispute Resolution in Roman Law and Its Replacing with Public Justice Tomislav Karlović (Zagreb, Croatia): Inefficacy and Growth of the State – Outsourcing as 'Back to the Future'? *Panel: Exchange of clinical experiences among students-clinicians from various providers of pro bono legal advice and assistance centres*

LIST OF PARTICIPANTS

1.	Lauren Bateman	London South Bank University, the UK
2.	Carol Boothby	University of Northumbria, the UK
3.	Marko Bratković	University of Zagreb, Croatia
4.	Bojan Brkić	Legal Clinic Split, Croatia
5.	Juraj Brozović	University of Zagreb, Croatia
6.	Roelof Bruls	University of Maastrich, Netherlands
7.	Annie de Roo	Erasmus University, Netherlands
8.	Tanja Domej	Univesity of Zürich, Switzerland
9.	Fernhout Fokke	University of Maastricht, Netherlands
10.	Ivana Gaćeša	Legal Clinic Zagreb, Croatia
11.	Aleš Galič	University of Ljubljana, Slovenia
12.	Johnny Hall	University of Northumbria, the UK
13.	Viktória Harsági	Pázmány Péter Catholic University, Hungary
14.	Henrik-Riko Held	University of Zagreb, Croatia
15.	Burkhard Hess	University of Heidelberg, Germany
16.	Ekaterina Ivanova	Yekaterinburg, Russia
17.	Rob W. Jagtenberg	University of Rotterdam, Netherlands
18.	Zvonimir Jelinić	University of Osijek, Croatia
19.	Emanuel Jeuland	University of Paris, France
20.	Tomislav Karlović	University of Zagreb, Croatia
21.	Bartosz Karolczyk	Kozmiński University, Poland

22.	Srećko Krivić	Legal Clinic Zagreb, Croatia
23.	Hedda Larsen Borgan	Iuss Buss, Norway
24.	Daglig Leder	Iuss Buss, Norway
25.	Richard Marcus	Hastings College of the Law, USA
26.	Kristina Martić	Legal Clinic Zagreb, Croatia
27.	Igor Medvedev	Centre of notarial studies, Federal Notarial Chamber of Russia
28.	Hrvoje Mihović	Legal Clinic Split, Croatia
29.	Ivan Milotić	University of Zagreb, Croatia
30.	Bettina Nunner-Krautgasser	University of Graz, Austria
31.	Paul Oberhammer	University of Zurich, Switzerland
32.	Katharina Plavec	University of Vienna, Austria
33.	Nena Podrug	Legal Clinic Split, Croatia
34.	Barbara Preložnjak	University of Zagreb, Croatia
35.	Julie Price	University of Cardiff, the UK
36.	Jan Willem Prügel	Pro bono Heidelberg, Germany
37.	Ivan Rađa	Legal Clinic Split, Croatia
38.	Milka Rakovčević	Faculty of Law „Iustinianus Primus“ in Skopje, FYR Macedonia
39.	Walter H. Rechberger	University of Vienna, Austria
40.	Alan Russel	London South Bank University, the UK
41.	Daniel-Sédar Senghor	Union Internationale du Notariat, Senegal
42.	Elisabeta Silvestri	University of Pavia, Italy
43.	Jorg Sladič	Advokat Sladič, Ljubljana, Slovenia
44.	Mathias Smith-Meyer	Iuss Bus, Norway
45.	Ana Sokač	Legal Clinic Zagreb, Croatia
46.	John Sorabji	Judicial Office for England and Wales, UK
47.	Magne Strandberg	University of Bergen, Norway
48.	Stjepan Šaškor	Notary Public, Croatia

49.	Srđan Šimac	High Commercial Court, Croatia
50.	Lidija Šimunović	University of Osijek, Croatia
51.	William Diego Tidemann-Andersen	Iuss Bus, Norway
52.	Raveena Theodore	London South Bank University, the UK
53.	Ralph Titahena	University of Maastricht, Netherlands
54.	Alan Uzelac	University of Zagreb, Croatia
55.	Dora Uzinić	Legal Clinic Split, Croatia
56.	C.H. (Remco) van Rhee	University of Maastricht, Netherlands
57.	Erida Visoçi	University of Tirana, Albania
58.	Svetlana Zagainova	Yekaterinburg, Russia
59.	Tatjana Zoroska Kamilovska	Faculty of Law „Iustinianus Primus“ in Skopje, FYR Macedonia

COURSE MATERIALS

MAASTRICHT STUDENTS (LED BY FOKKE FERNHOUT)

Research on the E-courts in the Netherlands

HENRIK HELD

Functions of Notaries Public in Medieval Ragusa

IVAN MILOTIĆ

Private Dispute Resolution in Roman Law and Its Replacing with Public Justice

TOMISLAV KARLOVIĆ

Inefficacy and Growth of the State – Outsourcing as 'Back to the Future'?

Reassessing the Essential Role of Public Courts -- the American Experience

RICHARD MARCUS

marcusr@uchastings.edu

This conference addresses a key set of issues that have occupied proceduralists in many different systems -- the centrality of relying on *public* courts to resolve disputes, and the centrality of public courts in resolving critical social issues. Of course, in all nations dispute resolution has existed outside the public courts, and often outside the public sphere.

In the US, at least, courts have assumed a much greater importance than has reportedly been true in other societies. One manifestation of that centrality is the striking use of American courts to achieve social changes in the mid 20th century.

Somewhat in reaction to that 'judicial activism,' the US Supreme Court embarked more than a generation ago on a relatively broad embrace of alternatives to litigation, and hence to public court resolution, of many disputes. A good deal of the bloom has come off that rose. Nonetheless, our Supreme Court has adopted an increasingly aggressive attitude toward application of the 1925 federal arbitration law to compel private resolution of a large number of disputes, heightening the concern about pushing dispute resolution out of the public realm.

Meanwhile, in a number of respects, American public courts have been 'outsourcing' their tasks. To some extent, these developments can be linked to distinctive aspects of American procedure that prompt potential litigants to seek alternatives to the public courts. The alternative dispute resolution (ADR) movement that emerged in the 1980s was largely a product of disaffection from the rigors, cost, and duration of public civil litigation. Indeed, some in America have even sought to 'privatize' aspects of criminal justice; 'private' prisons have appeared in a number of places. In all likelihood, similar developments can be identified in other countries, as will be explored in other papers presented at this conference. Indeed, the entire theme of this annual conference every year in its decade of existence reflects these concerns -- Public and Private Justice.

The issues raised by these developments are both basic and wide-ranging. This paper cannot do more than introduce a few of them and report on some American developments that bear on those issues, in hopes that this American experience will prove informative for others who confront similar issues in their systems. At its most basic, one might say that the core question is whether some private disputes really ought not be in public courts. In 1979, Professor Fiss noted that 'some disputes may not threaten or otherwise implicate a public value. All the disputants may, for example, acknowledge the norms and confine their dispute to the interpretation of the words of the

contract.'[1] He added that '[s]uch disputes may wind their way into court, and judges may spend time on these purely private disputes * * *. That seems, however, an extravagant use of public resources, and thus it seems quite appropriate for those disputes to be handled not by courts, but by arbitrators.'[2]

Also in 1979, then-Professor Posner noted that '[a]djudication is normally regarded as a government function and judges as public officials,' but added 'that the provision of judicial services precedes the formation of the state, that many formally public courts long had important characteristics of private institutions, and that even today much adjudication is private.'[3] Indeed, Dean Carrington urged at the same time that '[t]he costs in time, treasure, and stress that are associated with public intervention into a dispute can be justified, and are justified, only by reference to public needs, interests, objectives, or "goods."'[4]

So these issues have been with us for some time, and they are unlikely to go away. Indeed, they probably form the heart of the contributions of most or all of the others at this conference. To introduce the American experience, I intend to focus on several themes: (1) The distinctive evolution of American procedure and the common law aspects that make 'public' adjudication arguably more important than in other systems; (2) The emergence in the mid 20th century of 'structural' constitutional litigation, private enforcement, and commercial litigation between businesses as recurrent themes built on American procedural arrangements; (3) The recoil from various aspects of that mid-century development and efforts to constrain some of the most aggressive features of American procedure; (4)The emergence of case management as a method of confining American procedure; (5) The relatively simultaneous growth of interest in expanding decisionmaking capacity by conferring decisionmaking authority on people who are not traditional 'judges'; (6) the flowering of ADR and seeming disappointment with arbitration as a method of resolving commercial disputes; and (7) the current controversy about enforcing consumer and other 'contracts' to arbitrate rather than use the public courts.

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[1] Fiss 1979, p. 30.
[2] Id.
[3] Landes & Posner 1979, p. 235.
[4] Carrington 1979, p. 304.

Franz Klein's procedural model and the outsourcing of judicial tasks and functions – do Klein's ideas still meet modern requirements?

BETTINA NUNNER-KRAUTGASSER

bettina.nunner@uni-graz.at

The presentation will focus on Franz Klein's procedural model as transposed into the Austrian *Zivilprozessordnung* of 1895 and compare its basic elements to the reality we face today: Has the notable trend to outsource even judicial tasks and functions led to an abandonment of Klein's ideas? Have automated data-processing services like the *Mahnverfahren* or the transfer of judicial functions from judges to other court professionals altered the foundations of the procedural system? And above all, does Klein's procedural concept still meet modern requirements against the backdrop of an ever-increasing workload? The presentation will focus on the situation in Central Europe, especially in Austria.

The Limited Trends in Developing Private Justice in Poland: Why Polish system of civil procedure is still resistant to outsourcing of judicial functions?

BARTOSZ KAROLCZYK

bkarolczyk@law.gwu.edu

We live in time of mass consumerism, mass tourism and mass transportation. Mass courts are a necessity, if the state is to provide one of its essential, defining functions - resolution of disputes.

Let me put forth a contention that outsourcing of judicial functions is simply a necessity. It is not a question of if, but a question of when. As an idea, it is neither blessing, nor betrayal.

What do we mean by outsourcing of judicial functions?

It is fair to say that we mean adjudication, the fundamental function of the courts and the goal of every fair litigation. Adjudication is composed of at least four stages, i.e. 1) determination of facts, 2) determination of law, 3) application of law to facts; 4) decision.

Thus, in the largest sense, by outsourcing we mean taking the dispute out of the court system so that it can be resolved by someone else. So, outsourcing is the transfer of adjudication to a non-judicial decision-maker, whose decision is subject to judicial supervision.

The extent of that supervision is determined by parties' involvement in the decision to outsource the dispute. So, if the parties have voluntarily decided to exit the court system, judicial supervision of the ultimate resolution should be limited - there is no need to patronize. Here, the predominant mechanisms are arbitration and mediation. If the outsourcing mechanism is a default procedural norm, the control should be full. In Poland this used to be the case with orders for payment, which were once issued by public notaries.

Logically, arbitration moves all elements of adjudication out of state court. Mediation is somewhat different. The goal is to reach a settlement. The process is more about the future and not about the past (of course some common understanding of the past may sometimes be necessary to move forward). Therefore, the four stages of adjudication are not really relevant.

Regardless of the scope of judicial control, let's call this full outsourcing.

Arguably, in most cases fact-finding requires more resources than the other three elements combined

[1]. In addition, written opinion is considered a "building block" of procedure. This job probably comes

second in terms of time the judge needs to spent on it.

So, can selected elements of the process be outsourced? I think so. Let's call this limited outsourcing. Limited outsourcing could be achieved through procedural norms governing that selected aspect of civil litigation.

Not every dispute can outsourced. There are both normative and practical limitations.

Generally speaking, every case that can be settled can be subject to arbitration or mediation. However, there are many types of cases that cannot be settled in-court due to either express prohibition (e.g. a claim for declaring a standard contract clause abusive - which is by the way an exclusively legal dispute) or practical considerations (e.g. a claim for invalidating a contract).

Practically, ADR mechanisms are a good solution for a particular categories of parties. Namely, parties need to be: 1) of an equal (mostly financial) standing, 2) entangled in a genuine controversy in good faith; and 3) realize that litigation will adversely affect their operations (financially or otherwise).

If any of the above is missing, chances are one party will treat the court instrumentally. Such a party has no actual interest in processing the case through the court system fairly and efficiently. All in all, there will always be a large number of cases resistant to outsourcing.

[1] In countries undergoing legal transformation, like Poland, determination and application of law used to be a very serious problem.

The Argument for Choosing State's Judicial System or a 'Private' Outsourced Resolution of Disputes: a Practising Attorney's Point of View

JORG SLADIČ

advokat.sladic@sedmica.net

Much has been written on the advantages of private outsourced resolution comprising several forms of court-annexed, court-connected and out-of-court mechanisms of dispute resolution. However, legal writers in 21st century seem to be still divided over the issue of legal definition and status of various "outsourced" dispute resolution methods. Do negotiations (that might be unsuccessful and be followed by litigation or arbitration) already fall under the scope of "outsourced" dispute resolution.[1] Perhaps common law lawyers familiar with multi-tiered dispute resolution clauses and multi-step resolution clauses will concern negotiations already as an outsourced dispute resolution.[2] However, in Slovenia they are not considered as genuine dispute resolution. Negotiations after a failed performance of a contract are rather considered as a part of an attempt to achieve a specific performance that is deemed to be the natural remedy in law of obligations (under the *pacta sunt servanda* rule of Slovenian private law) and are not considered as a dispute solution mechanism.[3] Negotiations are rather considered as a very effective method of prevention of disputes. The general approach in Slovenia is: we shall negotiate before we have a dispute.

The Recommendation No. R (86) 12 of the Committee of Ministers to Member States concerning measures to prevent and reduce the excessive workload in the courts of 16 September 1986 shall also be mentioned.[4] A friendly settlement of disputes, either outside the judicial system, or before or during judicial proceedings shall be encouraged. One of the solutions proposed by that act of soft law is also "entrusting the judge, as one of his principal tasks, with responsibility for seeking a friendly settlement of the dispute in all appropriate matters at the commencement or at any appropriate stage of legal proceedings". This has lead to a very interesting development of court settlements (*sodna poravnava*) under Slovenian civil procedure.

As far as civil procedure and outsourced resolution of disputes in Slovenia are concerned the most known and important terms are arbitration and ADR. Slovenian scholars seem to include arbitration in the scope of ADR and give the following definition: ADR is any form of consensual dispute resolution without an intervention of State's courts.[5] The Slovenian definition seems to be somehow influenced by Slovenian legislation. Indeed Art. 2 of the Slovenian Act on Alternative Resolution of

1 See e.g. Đuričin 2013, p. 606.
2 See in South-East European kontext Đuričin 2013, p. 606.
3 Art. 9 Slovenian Code of Obligations, Official Journal of the Republic of Slovenia Nr. 83/2001 *et seq*..
4 Annuaire de la Convention Europeenne des droits de l'homme 1986, p. 225.
5 Betetto & Galič 2009, p. 17.

Judicial Disputes[6] defines the ADR as proceedings that are not litigation and in which one or several neutral persons cooperate in resolution of a dispute […] by applying mediation, arbitration, early neutral assessment or other similar proceedings. However, arbitration is in some ways far to similar to litigation to be considered as a genuine ADR. This is clearly acknowledged by jurisprudence. Indeed, "a resolution of a dispute before an arbitration does not represent a method for an amicable resolution of a dispute (like e.g. mediation) […]. It is substitute form of judicial protection, an arbitration decision produces equivalent effects as a final judicial decision (*res iudcata*).[7] ADR shall be defined as any form of dispute resolution facilitated by a neutral third party that is not a trial or litigation before a State appointed judge or judicial panel (conciliation, mediation, arbitration, mediation/arbitration, arbitration/mediation, etc.).[8]

Genuine ADR and arbitration are nevertheless both a form of an outsourced resolution of disputes. Dispute resolution that is not performed by State's courts seems to be an ancient institution already known by the ancient Babylonians, Chinese, Phoenicians, Greeks and Romans.[9] The standard wisdom has it that ADR and similar outsourced methods of dispute resolution like arbitration are slowly and progressively replacing the State's judicial system due to a rather beneficial, benevolent and speedy nature of dispute resolution as compared to a coercive and slow nature of State's court.[10] American legal writers speak very drastically of a change from the courtroom to the conference table.[11]

If we leave the legal writing and go to practice, we might find that there is more than pure law when choosing a dispute resolution mechanism. When choosing a path to solve a dispute, an attorney must take into consideration that the contents of any dispute is linked to human relations, the law is only the tool to solve such a dispute in a civilized manner i.e. in a socially acceptable manner. The big failure of judicial or State conducted resolution of disputes is the compelling binary logic. One party of the dispute is always the loser. On the other hand outsourced dispute resolution allows a win-win situation that is in judicial resolution of disputes possible only in case of court settlements. This might imply a different treatment of ordinary civil disputes (including the family law linked disputes, issues linked to property law and tenancy like e.g. *actiones possessoriae*, easements) and commercial disputes (i.e. disputes between legal persons of commercial law) as compared to disputes with the State. The tendency in Slovenia is that disputes – or at least that part of disputes that falls in

6 Zakon o alternativnem reševanju sodnih sporov (ZARSS), Official Journal of the Republic of Slovenia Nr. 97/09.
7 Court of Appeal in Labour and Social Matters of the Republic of Slovenia, order in case Pdp 935/2005, ECLI:SI:VDSS:2005:VDS.PDP.935.2005
8 Jovin-Hrastnik 2009, p. 1123-1124.
9 See e.g. Spillane 2011, p. 142, Miranda 2014, p. 9 - 11
10 Spillane 2011, p. 142 and Calkins 2011, Langbein 2012, p. 119 - 149. Europeans seem to be reluctant and try to set up a defense of a judicial system, see e.g. Stürner 2014, p. 632.
11 Calkins 2011, p. 15.

competence of civil courts in ordinary or commercial procedure – with State agencies and State owned enterprises do not follow the logic that compels legal subjects of private law to outsource their disputes.

A practical approach is that a negotiated solution is better in cases where there will continue to be (continuous) contractual or other links (like in custody cases). However in Slovenian practice issues like confidentiality are not that important. Fees and costs have a huge importance especially in labour cases, as mediations are free of charge in labour matters.[12] It must be said that outsourced dispute resolution like conciliation and arbitration have a long tradition especially in labour matters.[13] Nevertheless, the initial costs of litigation in first instance, arbitration and event court – annexed mediations in civil, commercial and labour cases are virtually identical due to identical bar tariffs and stamp fees. The monetary consideration is seen only after the friendly conclusion of a litigation in form of restitution of stamp duties. The most important issues are rather the speed and the quality of the proposed resolution of disputes. In Slovenia as far as the quality is concerned - surprisingly enough - an argument can be heard that a mediation or an arbitration might indeed be faster than judicial proceedings. However, judicial proceedings allow the access to appellate courts and sometimes to the Supreme Court. Appellate judges are deemed to be of high quality and therefore a judicial resolution of a dispute might due to the quality of the ruling be of higher interest for the parties than a fast arbitral award that is not rendered by appellate judges. The reason is that managers of Slovenian state owned companies seem to operate solely by legal opinions rendered by their legal services and are often afraid to opt for an ADR instead of long judicial proceedings due to their liability to shareholders. In other words, if an independent court rules against such a company, a company's director will not be liable. An independent court ruled according to the law. If on the other hand the company's director will opt for a fast and negotiated resolution of a dispute ending in a pecuniary lower award than a court would render, the shareholders might hold him liable as he did not go before the courts and fight the case until the end.

12 See e.g. Škundrić 2012, p. 2,

13 See e.g. Recommandation adopted by the International Labour Organisation like Recommendation concerning Voluntary Conciliation and Arbitration, 1951 (No. 92), Recommendation concerning the Examination of Grievances within the Undertaking with a View to Their Settlement 1967 (No. 130),

The IT-based Administration of Justice in Austria

WALTER H. RECHBERGER

walter.rechberger@univie.ac.at

Since the beginning of the nineteen-eighties the Austrian Ministry of Justice has built-up a comprehensive network for the general use of Information Technology. All courts, public prosecution services and penal institutions are connected to the Corporate Network Austria (CNA). All major applications of the Ministry of Justice, such as the land register, the commercial register, the expert, interpreter and mediator list and official receivers in bankruptcy database, the edict file (insolvency file, real property auctions, commercial register publications) etc., are housed and operated in the Federal Computing Centre (BRZ), which serves as a best-practice example of outsourcing of ICT-services of justice. BRZ is connected to the CNA to provide a redundant connection. Communication to other ministries, other agencies and the general public are centralized in the BRZ. All network connections can be used for telephone calls, video conferencing by applying voice over IP and applications (cf. Republic of Austria, Federal Ministry of Justice, E-Justice Austria, February 2014, p. 36).

Limits of Private Justice? …where Blessings Become Betrayal

ALAN UZELAC

auzelac@gmail.com

How much outsourcing is too much? The desire to discharge the courts and judges of some of their many tasks may be a noble task, but where are its limits? The modern reform trends sometimes easily absolve the issue of main purpose of the task transfers, and fail to define the parameters for their own success. In this contribution, it will be attempted to address the roots of the main theme of the Tenth Public and Private Justice Conference by setting a general framework for the discussion of advantages and disadvantages of outsourcing. Indeed, under specific conditions and assumptions, the outsourcing of judicial tasks and functions can be a blessing. But, may all tasks and functions be outsourced? This presentation will analyze what are the most difficult and, perhaps, inadmissible cases for any sort of outsourcing. Further on, it will discuss what forms of outsourcing – in particular the outsourcing of public functions and services of the state judiciary to private actors – may be better than the other, and what could make them better (or not) than the corresponding counterparts in the sphere of public justice. The presentation will deal both with the comparison of procedures (public v. private models of specific procedures that compose civil justice) and with the comparison of the main agents and actors (public v. private models of task distribution among professionals in civil justice).

Enforcement by Way of Private Penalties (Astreinte) in Slovenia: A Transplant Gone Wild

ALEŠ GALIČ

ales.galic@pf.uni-lj.si

In Slovenia, a state court is involved in the enforcement proceedings from its commencement as it is necessary for the creditor to apply for a court order authorising the enforcement. The creditor must file a motion for enforcement with the court, which shall then issue a warrant of execution (*sklep o izvršbi)* by which it shall verify the title and order enforcement measures. Thus, the warrant of execution does not only confirm the enforceability of the judgment in general, but also defines with which methods and to what extent the enforcement is authorized in the particular case. With regard to the system, that the creditor always needs to obtain an authorization from the court, Slovenian law of enforcement of judgments in civil matters is (just like the law of civil procedure in general), still similar to Austrian law. The warrant of execution entails the creditor to proceed with physical measures of enforcement – with the methods of enforcement and to the extent, authorized in the warrant of execution. As a general rule, objections and complaints do not have the effect of suspending the procedure. However the attached property may not be sold until the warrant of execution has become irrevocable. The debtor may file an objection against warrant of execution. The same court (i.e. the county court that issued the warrant of execution) then re-examines the case in the light of reasons, contained in the objection. If unaltered, the warrant of execution may then be appealed against (to the court of appeals).

After the warrant of execution has been rendered, enforcement proceedings remain in the domain of the court in certain types of enforcement (e.g. garnishment of debts, enforcement against real estate and enforcement of certain non-monetary claims such as injunction judgments). For certain other types of enforcement (enforcement into movable property and enforcement of certain non-monetary claims such as eviction of a tenant who does not have or no longer has a legal right of occupation), the responsibility for physical actions of enforcement is allotted to private enforcement agents (bailiffs).

Concerning enforcement of judgments for specific performance, different methods are available. If the debtor is required to undertake a particular action, but this is such that it could be performed by another person, the creditor may, upon the court's authorization, have the work accomplished by a third party at the defendant's expense. Upon the creditor's request, the debtor may also be ordered to advance the money, needed to pay the third party. Depending on circumstances, assistance of a bailiff may also be authorized. If the debtor is required to perform a particular undertaking which cannot adequately be performed by anyone else (performance strictly *intuitu personae*); the

enforcement is reached through use of indirect pressure; a pecuniary fine may be threatened and ultimately imposed as a means of persuading the debtor to fulfil his or her obligation. The amount of fine should depend on circumstances of the case but it may not exceed *cca*. 4.000 EUR for physical person or *cca*. 20.000 EUR for a legal person or a sole trader. If the debtor still fails to accomplish the required undertaking, the fine is enforced *ex officio* and another fine can be imposed till the whole amount of imposed fines has reached ten times of the aforementioned amounts (Art. 226, EJPMA). If an injunction to refrain from acting is rendered against the debtor, the course of enforcement is practically the same, except that there is no upper limit for the level of overall amount of fines that may be imposed (Art. 227/1, EJPMA). The fine is paid to the benefit of the state budget. Slovenian law does not permit imprisonment to be used as a sanction for non-compliance with the judgment.

The system of fines (payable to the state budget and under close scrunity of the state court) as the regular method of enforcement of prohibitory injunctions and personal undertakings is well accepted in doctrine and in practice. It has a long tradition, it has basically been in force without interruption since the time when Slovenia was still a part of Austria (until 1918) and Yugoslavia (between 1918 and 1991). The regulation in the EJPMA is sufficiently detailed and balanced and the case law sufficiently developed.

However, in 1978, an important reform of civil law took place in (then) Yugoslavia. The concept of *astreinte* (civil penalty – thus, the main practical difference in regard to the system of fines is that here, the penalties, go to the "creditor's pocket") was introduced as an additional means of indirect enforcement of judgments in civil matters. This reform did not abolish that the aforementioned system of fines. It just gave creditors another option to pursue the fulfilment of non-monetary claims, affirmed by final court judgments. Undoubtedly, the introduction of astreinte in the (then) Yugoslav legal system was influenced by French law. In the Yugoslav era, however, the instrument of astreinte, has never been widely used in practice and it was mostly overlooked in legal writing as well.

After the independence of Slovenia and in the era of socio-political, legal and economic transition, the situation has changed. Creditors increasingly started to use the instrument of astreinte, and only then it became apparent that the regulation does not contain sufficient guarantees against abuse. Rarely any other concept of Slovenian private law has sparked so many controversies in the legal doctrine as the concept of astreinte. The objections against the astreinte in legal doctrine are numerous. It is argued that the concept of astreinte is an "alien" in the Slovenian system of enforcement. The concept of astreinte was, it is argued, transplanted from the French law, however just on the level of principle, without all necessary measures of adequate implementation. There is only one article in the Code of Obligations and one article in the EJPMA which is insufficient and this

drastically diminishes legal certainty and predictability in this field (for example: whether an astreinte order may be issued in *ex parte* proceedings, what are the grounds for appeal, in what kind of procedure can a reduction of astreinte be sought…). This situation is aggravated by the fact that astreinte has no tradition in Slovenia (the concept has only been introduced in 1978) and there exist very few judicial decisions of highest courts. Due to insufficient case law and legislative regulation, there is a serious lack of safeguards concerning the principle of proportionality (enormous debts totally disproportionate to the value of the claim were built up in certain cases, reported also in the media) and prevention from the creditor's abuse of rights. Besides, unlike fines, astreinte can be applied with regard to final judgment for any non-pecuniary obligation – such as delivery of goods or an undertaking (service) which is not of exclusively personal character (and which can therefore be adequately performed also by a third person). Therefore, many advocate the possible introduction of a restriction that astreinte should *de lege ferenda* be only possible in the same cases as the imposition of fines in ordinary enforcement procedure (prohibitory injunctions, personal undertakings). The legal nature of astreinte is rather unclear. The fact that the Constitutional Court was addressed to decide whether the regulation of astreinte is in conformity with the Constitution is also a sign of the described controversy concerning astreinte. In the end, the Constitutional Court confirmed that the regulation of astreinte in EJPMA is not contrary to the Constitution but it also needs to be noted that the decision was reached by a slight majority (5:4) and the matter was highly controversial within the court as well (Decision of the Constitutional Court No. Up 181/99, dated 18.12.2002. See also dissenting opinion of Judge Wedam Lukić to the aforementioned decision).

Nevertheless, in recent, years the law of astreinte has too a certain degree developed through case law. Some of the disputed issues were settled and certain necessary safeguards established. The experience proved that it was not necessary to amend legislation in order to enable courts to set limits concerning maximum amounts and that the same result could be reached through more adequate case law. Courts can now determine limits with regard to maximum amount or maximum duration of astreinte and can also apply general principles of prevention from abuse of rights. Nevertheless, certain clarifications and improvements on the legislative level would still be desirable. On the other hand, positive effects of astreinte should not be overlooked. Especially in a country like Slovenia, where (from the viewpoint of individual creditor) ordinary enforcement proceedings are often excessively time consuming and where (from the viewpoint of the interests of the judicial system as a whole) there is still much need to promote the legal value that final decisions of the judiciary should not remain unrespected and ignored.

From 'shadow of the law' to 'shadow of the settlement'?

ROB JAGTENBERG & ANNIE DE ROO

jagtenberg@frg.eur.nl & deroo@law.eur.nl

The 2013 European Commission Recommendation on settling mass damage claims urges Member States to reserve a prominent place for the collective amicable settlement of such claims. Though collective action for the recovery of damage is still not possible in the Netherlands, Dutch law does provide for the possibility of the court endorsing collectively agreed settlements, since 2005 (WCAM Act). In this contribution one or two of the most notorious settlements achieved under this Act are discussed in some depth (incl. the role of mediators). The key argument is that , although individual victims may retain their standing to sue in court, the courts show a tendency to cling to the terms of the collective settlement just the same ('reflex effect or shadow of the settlement'). The line between public and private justice is thus thinned in extremis, but the question is: in whose interest (the administration of justice; taxpayers; big business; victims/consumers), eventually?

‘Hello Arbitration, Goodbye Litigation’: New Trends in the Italian Dispute Resolution System

ELISABETA SILVESTRI
elisabetta.silvestri@unipv.it

Toward the end of 2014, a new wave of reforms reinforced a trend the Italian lawmakers have been following since the late 1990s, namely, the trend to devise ways to remove from the courts the highest possible number of civil and commercial cases so as to promote (and sometimes to force) an extensive use of ADR methods. Expressions of this trend are mandatory mediation and the new assisted negotiation, equally mandatory for monetary claims up to a certain value. But the true novelty is the possibility for the parties to a case that is already pending before a court (even a court of appeal) to request that the case be ‘transferred’ to a panel of arbitrators. The presentation will discuss the many problems brought about by the new rules, in the framework of the principle of access to justice that in Italy corresponds to a specific guarantee enshrined in the Constitution.

Mediation in Russia – A Form of Outsourcing?

SVETLANA ZAGAINOVA

svetlana_z@bk.ru

Near four years have elapsed from the date of entry into a force of the federal law №193 "On Alternative dispute resolution process involving a mediator (mediation)" (hereinafter - the Law on mediation). It should be noted that during this time the first steps in the formation of the practice of mediation in Russia have been made. Year by year the progress has been going in the development of this legal institution. First of all this was due to the formation of the legislative framework: in addition to the Law on mediation a number of important pieces of legislation were amended to ensure the law on mediation (for example, the Civil Code, the Civil Procedure Code, the Code of Arbitration Procedure, Law "On arbitral tribunal of the Russian Federation").

Secondly, the organizational and legislative work is doing on the further development of mediation in legal practice. Thus the Supreme Court of the Russian Federation published an annual compilation of jurisprudence on the application of the Law on mediation. On July 18, 2014 Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation № 50 "On the reconciliation of the parties in the arbitration process" was accepted. The notary community in Russia pays attention on the need to implement conciliation procedures in notary's activities. Thus in 2009 the Federal Chamber of Notaries included among the programs of professional development a special program "Mediation in notaries activities". Issues dedicated to implementation of conciliation in notaries activities are discussed in the draft of the Federal law "On notary and notaries activities in the Russian Federation". To implement mediation in different spheres of legal practice a worthy amount of round tables, seminars and conferences are held. In 2012 the Center for Mediation of the USLU established the International Research and Practice Conference "The Practice of Mediation in Russia: Problems, Challenges, Solutions" with judges, notaries, mediators, lawyers of private practice as participants and all this community discuss current issues of mediation practice. The result of the Conference was the active development of mediation in different regions of Russia.

Third, there is some progress in the development of the practice of mediation in civil cases. This is facilitated by the legal practice of experiments that are currently being implemented on the model like the first organized in Russia legal experiment on the introduction of mediation in civil proceedings conducted by Sverdlovsk Regional Court, Center for Mediation of the Ural State Law University and the Office of the Judicial Department of the Sverdlovsk region. Great work on the settlement of legal disputes under the mediation procedure is carried out by regional Chambers of

Commerce under the leadership of the Center for Arbitration and Mediation of Chamber of Commerce and Industry of the Russian Federation.

But despite all these positive aspects the pace of development of mediation leaves much to be desired. While the practice is not a full-scale, its active development can be observed only in some regions of Russia (Moscow, St. Petersburg, Sverdlovsk region, Lipetsk region, Krasnoyarsk territory, Perm territory) and the reasons for that is a number of difficulties facing today's to practical mediation. Among the most pressing it is possible to allocate mental, organizational and legal complexities. Our Center for Mediation of the USLU was analyzing them for several years, and then developed certain options to overcome all complication and test these solutions in practice, receiving positive results.

Norwegian Board System

MAGNE STRANDBERG

Magne.Strandberg@jur.uib.no

The Board System is an alternative dispute mechanism that may be used instead of or before a court proceeding. A board is an institution that is similar to courts and may have some of the same functions as a court, but it is not a court and there will normally be fundamental differences between a board and a court. Some of the typical differences are that the boards are normally set by both lay people and lawyers, the boards are free of charge and the proceedings before the boards are much simpler than a court-proceeding. The boards are regularly used in consumer cases, personal injury cases and administrative cases, but they are also used in several other areas of law.

ADR and the Privatisation of English Civil Justice

JOHN SORABJI

John.Sorabji@judiciary.gsi.gov.uk

My subject today is alternative dispute resolution (ADR) and the privatisation of English civil justice. If I had taken this subject forty years ago I imagine many people would have asked what ADR meant. Perhaps some who had heard of the Pound Conference[1] or Frank Sander's, now famous, piece on the Varieties of Dispute Resolution[2] would have had an idea what it meant.

In the forty years since the Pound Conference ADR – by which I mean, following the definition given in the Civil Procedure Rules, a variety of '*methods of resolving disputes otherwise than through the normal trial process*'[3] – has become a central aspect of the dispute resolution environment. And those means include, as is well-known, negotiation, mediation, early neutral evaluation, arbitration, and adjudication.

Consensual settlement – the consequence of successful ADR – has, of course, always been understood to be in the public interest, as Lord Simon noted as long ago now as 1987. In *D v NSPCC* he noted how settlement was '*very much in the interest of society*'. It was – and is – because lawsuits are '*wasteful of human and material resources . . . [and because] litigation is wasteful and disruptive, society benefits if disputes can be settled out of court . . .*'[4].

Since the 1970s its benefits have not only been recognised throughout the common law world, and not just in the common law, but they have also seen ADR's various methods vigorously promoted. This promotion has seen ADR recognised – in the words of Mr Justice Lightman – as lying '*at the heart of today's civil justice system*'[5], or as Lord Justice Ward put it, '*a perfectly proper adjunct to litigation.*'[6] And by this Ward LJ meant that only those individuals who were – in his words - '*"completely cuckoo"*' – would not use ADR to resolve their disputes.[7]

Turning to privatisation, I imagine that forty years ago few outside of certain political think tanks would have been familiar with the idea. The 1980s put an end to that, with the State divesting itself of large numbers of nationalised industries. Well-known examples are the denationalisation of British

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[1] A. Levin & R. Wheeler, '*The Pound conference: perspectives on justice in the future: proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice*', (West, 1979).
[2] F. Sander, '*Varieties of Dispute Processing*' (1976) 70 Federal Rules Decisions 111.
[3] CPR (1998), Glossary.
[4] *D v NSPCC* [1987] AC 171, 232.
[5] *Hurst v Leeming* [2001] EWHC 1051 (ChD) get from formal law report cited later at (3);
[6] *Egan v Motor Services (Bath) Ltd* [2007] EWCA Civ 1002, [2008] 1 WLR 1589 at [53].
[7] Ibid.

Telecom (1984) or British Gas (1986). There are, of course, many other examples. More recently, the political discussion has shifted to how far market forces, the private sector, can be brought to bear within the National Health Service. Whatever view is taken of the merits or otherwise of privatisation, it is an issue that no one could properly be unaware of today.

Having taken ADR and privatisation of the civil justice system as the subject of my presentation what do I suggest is the relationship between the two? There are two possible answers to this question. The first focuses on the way in which the courts and members of the judiciary have understood the promotion of ADR. The second potential answer places ADR's promotion in a wider context, one that understands it as one instance of a general trend towards the privatisation of the civil justice system. I am not going to suggest that we are on the verge of privatising civil justice. What I am going to suggest is that there is a distinct direction of travel, and one that may result in a very different civil justice system to one we have today. I look at these two issues first. I conclude by highlighting a number of issues that such a different system will create and which will need to be resolved.

Interpretation of Arbitration Agreements: Valid Arbitration Agreements as a Gateway to Private Justice

KATHARINA PLAVEC

katharina.plavec@univie.ac.at

International Commercial Arbitration might be considered to be one prime example of "private justice." Due to the widespread use of this method of dispute resolution, particularly in international trade, pathological arbitration agreements are a recurrent problem that both arbitral tribunals and state courts frequently encounter. According to *Eisemann,*[1] an arbitration clause is pathological when it does not facilitate the resolution of disputes between the parties, but instead creates an additional dispute about its validity and content. By way of example, a clause might be ambiguous as to whether it constitutes an arbitration clause or a forum selection clause. In such instances, one may either rely on the principle of favor arbitri, thus favoring arbitration, or declare the arbitration clause invalid and refer the parties to state jurisdiction. Different issues arise in situations where the arbitral institution the parties are naming in their arbitration agreement does not exist or has ceased to exist. Solutions include interpreting the clause as an ad-hoc clause or referring the parties to another arbitral institution according to the parties' presumed intent.

In this presentation, different approaches of interpretation of arbitration agreements taken by arbitral tribunals and various national courts will be discussed, all centering around the question of party autonomy and the (perceived?) equality of arbitral tribunals and state courts.

[1] *Eisemann*, La clause d'arbitrage pathologique, in Commercial Arbitration, Essays in Memoriam Eugenio Minoli (1974) 129ff

In-court Mediation as a Form of Outsourcing?

SRĐAN ŠIMAC

srdan.simac@gmail.com

Courts are a public service. The task of the judges is not only to resolve the disputes, but also to assist the parties to resolve them. Therefore, the courts and the judges should add to their present roles some new ones. Examples of co-existence of mediation and litigation in the courts indicate good odds for their coexistence ("two track justice system"). The aim is to take advantage of both systems. It is a symbiosis in which none of the systems does not underestimate or diminish the importance of the other. The legal system cannot survive in its monolithic, without addressing the needs of its users and the demands of the modern time. Therefore, mediation and litigation cannot exist as two separate systems of dispute resolution. Mediation in the courts is the process of building a new system of dispute resolution in which all of its parts are equally valuable and complementary. It represents modernization of the old structures or interpolation of new solutions to the old one, which together make up a new, better and more effective whole. This modern legal system will enable states and courts to fulfill their fundamental task - to provide more efficient and timely protection of the rights of citizens. Blindfolded Goddess of Justice should not be just a "fashion detail". The task of all modern societies is to provide citizens with appropriate mechanisms for access and achievement the highest possible degree of justice. In this respect this is an example of the evolution of a society in which its alienated legal system returns to its roots - socialization of law and the courts. With the litigation on new grounds and mediation within courts, the parties have an opportunity to leave the courts with confidence in the institutions that enabled them a quick access to justice. The courts are becoming more efficient, the number of cases is reduced, the customer satisfaction with work of courts and judges is increased and judges' satisfaction with their work as well. This is democratization in disputing that puts the courts and judges in the social function for which they were intended. In pursuit of this approach, they have a chance to replace the unsuccessful judicial reform activities with successful results of the reform. Because of that, mediation in courts does not constitute of outsourcing or betrayal, rather better and more efficient use of internal capacities or blessing, for the courts and users of their services.

Experiences with the Introduction of Private Bailiffs in Macedonia

TATJANA ZOROSKA & MINJA RAKOČEVIĆ

tzoroska@yahoo.com & minjarakocevic@yahoo.com

Ten years ago, Macedonia made a drastic step in reforming the system of civil enforcement. Leaving behind a decade's long tradition of court-oriented system of civil enforcement, Macedonian legislator has opted for a completely different concept of enforcement from the previous one. Introducing the system of "private" enforcement by appointing bailiffs, as legal professionals who perform public authorization determined by law and conduct the enforcement, Macedonia strove to eliminate all dysfunctions of the system due to the slowness and the inefficiency of the enforcement procedure, which seriously affected the proper administration of justice. Although private enforcement agents were absolutely unfamiliar in Macedonia (and in the region at that time), their introduction was consistent with the general tendencies of the national strategy for reform of the Macedonian judiciary. The bailiffs were established as a separate legal profession with the highest standards in terms of legal and professional background.

The aim of ensuring quality, efficiency and effectiveness of the civil justice system regarding the proper protection of subjective rights, in a certain way, was accomplished by the transfer of the enforcement from the courts to the bailiffs. Taking enforcement out of the courts came as no surprise given that the 'modern' concept of outsourcing public, and more precisely judicial responsibilities, had already been accepted in Macedonia. The process of "unburdening" the courts from undisputed cases started in 1996 with the introduction of the notary as those providing a service to take over a large number of former non-contentious court matters.

A decade later, number of questions regarding the bailiff-oriented enforcement system are imposed: whether "outsourcing" the enforcement from the courts was a right decision in the context of the broader reform of the judicial system, in general; whether the dejudicialisation of enforcement is a successful undertaking of the Macedonian legislator; what are the experiences and the general impressions regarding the introduction of the private bailiffs in the Macedonian legal system, whether this radical reform is a positive example of unburdening the courts in the aim of achieving a greater goal – to provide an overall efficiency of the enforcement, etc.

Main Trends of Outsourcing of Judicial Functions in Hungary: Arbitration, Mediation and Notarial Order for Payment

VIKTÓRIA HARSÁGI

harsagi.viktoria@jak.ppke.hu

Three main trends should be mentioned, if we intend to analyse the phenomenon of outsourcing of judicial functions to persons other than the state courts. The oldest type of ADR is arbitration (from 1868 on). After World War II, arbitration was driven into the background. A significant change in this situation occurred in 1988 only, when, within a narrow circle, the Act on Business Associations rendered arbitration possible again. In the decade following the political transformation, possibilities of recourse to arbitral tribunals became continuously extended.

After the millennium Hungary regulated the issue of mediation among the first. Originally the model of the out-of-court, but in 2012 the so-called in-court mediation was as well introduced in Hungary. In this new system – which will exist parallel to the old out-of-court mediation system as an alternative – the mediators are court clerk, that means, lawyer working at least three yours at the court before being judge after passing the bar examination. As to the outsourcing of judicial functions this is a remarkable step back.

The institution of the order for payment procedure was introduced into the Hungarian legal system in 1893. There was no change in the essence of the legal institution for a century. A remarkable innovation is constituted by the solution − unusual in Europe – that the Act delegated the non-litigious procedure traditionally falling within the competence of the courts to the competence of notaries public. One may come across several approaches concerning the evaluation of the question of constitutionality. The attention must be paid to the question as to whether order for payment procedures should be regarded as forming part of the administration of justice.

The Costs of Privatization of Public Justice: a Comparison of Croatian, Slovenian and Austrian Systems of Enforcing Uncontested Debt

MARKO BRATKOVIĆ

marko.bratkovic@pravo.hr

The Austrian system of enforcement of uncontested debt in a special payment order court proceeding (*Mahnverfahren*) is a well-known example of efficient automated data-processing service. The proceeding itself does not in fact constitute dispute resolution. It is a mere payment service that grants the plaintiff an enforceable title. In related Slovenian and Croatian practice an important role is played by a special enforcement procedure supported by so-called trustworthy documents. It is in fact a payment order proceeding comparable to the Austrian model fused with the procedure for granting a warrant of execution. In Croatia the procedure is carried out by notaries public at creditors' request, while in Slovenia warrants of execution are issued electronically. Even though the procedure falls within the competence of the court, a single judicial department at the Local Court in Ljubljana has been set up for the purpose with national jurisdiction over all enforcement cases related to trustworthy documents (Central Department for Enforcement of Authentic Documents – COVL).

Statistical data on the functioning of the system of enforcement of uncontested debts for Austria, Slovenia and Croatia cannot be easily obtained, so no comparative analysis has been carried out to date. However, the available data can be used to illustrate the efficiency of the respective models of enforcement of uncontested debt. In addition, efficiency should be measured against the costs of the procedure. Are the costs payable by the parties reasonable with regard to the amount of debt to be collected in the proceeding? Do any of the models favour certain parties by its fee composition? Is it more suitable for one-shotters or rather repeat players? Does the national justice system as a whole benefit from such procedures of certifying uncontested debts? Do such procedures alleviate the burden borne by the justice system? Do they create revenue? The comparative analysis of the collected statistical data offers answers to those and some additional questions.

Justice.com: an Example of Outsourcing of Civil Procedure

EMANUEL JEULAND

emmanueljeuland@wanadoo.fr

My speech in Dubrovnik could be on the kind of website (justice.com) I presented in Maastricht and the procedural consequences. This kind of website which prepares the files of their clients to bring an action is doing a part of the case management, there may be used to develop an online mediation and to calculate the amount of the demages. So, many thing may be outsourced by the way of this kind of website. My general topic could be : Justice.com and the outsourcing of civil procedure. A main issue is to determin in which extent this kind of outsourcing modifies the civil procedure. It could be argue that it is only a new tool which is not going to change the procedural principles (which was your interesting point in Maastricht). I will try to argue, for the sake of discussion, that this kind of website could change at least the principles of cooperation (with a pre case management), of immediacy (no physical relations between parties and juges) and of publicity.

Research on the E-courts in the Netherlands

ROELOF BRULS & RALPH TITAHENA (LED BY FOKKE FERNHOUT)

fokke.fernhout@maastrichtuniversity.nl

The financial pressures on government expenses have led to a Europe wide and perhaps even worldwide trend of policy makers looking for ways of reducing the costs of the administration of justice in civil cases. Court fees are increased, the number of judges is reduced and judicial case management replaces the autonomy of the parties in civil litigation. Furthermore, the length of proceedings must be shortened and settlement rates must improve.

Not only financial incentives have inspired the pursuit of efficiency and quality in civil cases. Judicial systems must keep up with the times. With the digitalisation of society, modern ways of administering justice are being adopted. This is accompanied by attempts to reduce the procedural costs and the length of court proceedings by introducing (either in private or in public procedure) various forms of electronic litigation, varying from electronic notifications to the online exchange of pleadings in e-courts. The concept of e-Justice covers all these forms of electronic litigation.

Though e-Justice can facilitate the access to justice befitting the 21st century, it is not just a matter of overcoming technical problems and guaranteeing security. Since all litigation has to be in accordance with art. 6 of the European Convention on Human Rights, e-Justice as well has to comply with the requirements of a fair trial, including the right of access to justice and the right of being heard. It follows that simply allowing the parties to submit their claims and defences by email will not do.

In this comparative research into electronic litigation, civil procedures have been broken down into seven moments that will need the special attention in any design of e-Justice (Litigation 2.0). These moments are

- submission of the claim
- notification of other parties
- the case tracking system that is adopted
- accessibility of the file
- submission of pleadings (including the submission of evidence and counterclaims)
- hearings and trial
- delivering of the judgment

A comparison between various EU States will show which solutions for each of these moments have been adopted, which will probably be related to restrictions on the type of cases that qualify for e-Justice and to privacy policies. These solutions can be evaluated in terms of time and cost efficiency. The outcome will show some best practices in implementing e-Justice and will help to develop a tool to assess the degree to which e-Justice has been successfully implemented.

The first results will be presented at the PPJ seminar in June 2015.

Functions of Notaries Public in Medieval Ragusa

HENRIK HELD

henrik.held@gmail.com

Functions of notaries public in contemporary legal systems differ, but it could be generally stated that they perform important legal services. One of the issues in the analysis of the notary public services regards a possible devolution of judicial tasks and functions from the courts to notaries. This could be considered an outsourcing of the functions that are traditionally associated with the judiciary.

From a historical perspective of the Middle Ages, this distribution of functions is reflected in the different tasks of *notarius* and *cancellarius*. Generally, *notarius* performed private legal services, such as composition of contracts, debt instruments, etc. On the other hand, *cancellarius* held a public office, in which he took minutes of the judicial proceedings, administered land registries, etc.

This paper will analyze public and private aspects of the functions of notaries public in Medieval Ragusa. It will specifically concentrate on the first lay notary public Tomasino de Savere, who performed notary services at the end of the 13th century. He was an educated scholar of Roman law form northern Italy, and a first layman to perform those services. Moreover, he was the first one to hold office both as *notarius* and *cancellarius*, while still explicitly and strictly differentiating between those functions. Analysis of his role will thus be most helpful in the understanding of the distribution of judicial tasks and functions between state authorities and *notarius* in Medieval *Ragusa*.

The analysis of this paper will provide an insight into the functions of notaries in a legal system that was developed under the influence of local customs and *ius commune*, and served as a basis for further development of the notary public services. In the contemporary context, this paper provides a historical point of view for the contemporary discourse on the distribution of judicial tasks and functions between the judiciary and notaries.

Private Dispute Resolution in Roman Law and Its Replacing with Public Justice

IVAN MILOTIĆ

ivan_milotic@yahoo.com

Division into private (*ius privatum*) and public (*ius publicum*) Roman law was consistently followed in the field of dispute resolution till the 3rd century AD. Resolution of all disputes that emerged from private sphere was purposefully and exclusively left to private means, regardless whether it was judicial proceeding (which in Roman law was of private nature) or arbitration. Even between these two general concepts of private dispute resolution there were clear cut distinctions because the Roman law developed precise understanding that certain groups of disputes and differences should be resolved through judicial proceeding while the others in arbitration.

The Roman legal practice made efforts to identify disputes and differences whose resolution should in a more effective way be achieved by replacing the court proceedings with non-court procedural means or by diverting and displacing the non-contentious matters into extrajudicial modes of resolution. Moreover, the dispute resolution in the field of Roman private law was significantly privatized by discharging majority of procedural functions to the persons who were not professionals at law or by including into this process considerable number of non-jurists who were experts in factual matters of particular dispute.

This paper will analyze a general concept of private dispute resolution in Roman law which is conceptually different than in modern societies. With reference to the judicial proceedings till the 3rd century AD and arbitration the author will examine the original concept and foundations of dispute resolution in European legal history which were private by its nature and method of operation. Moreover, it will explore the replacing of such concept with public justice, as well as the reasons and long term effects of such change. This change will be carefully observed with reference to the efforts of re-privatization of some aspects of justice in modern societies.

Inefficacy and Growth of the State – Outsourcing as 'Back to the Future'?

TOMISLAV KARLOVIĆ
tkarlovi@pravo.hr

Considering the general idea of evaluating risks and benefits of outsourcing different functions discharged by the courts in contemporary legal systems from the standpoint of Roman law it is easily noticed that many of these functions were completely or predominantly „private" at the peak of Roman legal development. Only later, because of the growing centralization, bureaucratization and in the end inefficacy of judicial system faced with changed cultural and societal circumstances, these functions were overtaken by the state and its judiciary. In the modern context, these same factors are also often named as causes for outsourcing. In this paper it will be analyzed why and how certain functions, especially those regarding enforcement procedures, were transferred to state in ancient Rome in an effort to see if there are „lessons learned" by which we can better appreciate reversals to private justice now.

Public and Private Justice:
Dispute Resolution in Modern Societies

Private Justice in Service of Public Goals?

Outsourcing of Judicial Tasks and Functions - Blessing or Betrayal

Programme 2015 * Tenth PPJ Course and Conference

International Clinical Legal Education Panels

Thursday, June 11 **Afternoon Session:** (15,00-19,00)	***Panel: Contribution of Legal Clinics to Avoiding Unnecessary Litigation*** Jonny Hall (Northumbria, UK): Opportunities for clinics to encourage Alternative Dispute Resolution Julie Price (Cardiff, UK): From Cardiff to Croatia: a brief A-Z of clinical legal education challenges in the UK Alan Rusell (London, UK): Clinical Legal Education in the UK – Drop-in Advice and Early Intervention Jan-Willem Pruegel (Hedelberg, Germany): Maximizing Legal Clinics as a Tool for Decreasing Litigation Zvonimir Jelinić (Osijek, Croatia): Legal Clinics in the Time of Economic Downturn. Contribution to the discussion on how to employ legal clinics in order to avoid unnecessary litigation Lidija Šimunović (Osijek, Croatia): Contribution of Legal Clinics to Avoiding Unnecessary Litigation: The Example of Legal and Business Clinic at University of Osijek
Friday, June 12 **Morning Session** (9,00 – 13,00)	***Panel: Exchange of clinical experiences among students-clinicians from various providers of pro bono legal advice and assistance centres*** Lauren Bateman, Raveena Theodore (London, UK): Clinical Legal Education in the UK - Working in a Drop-in Legal Advice Clinic Mathias Smith-Meyer, William Diego Tidemann-Andersen, Daglig Leder (Oslo, Norway): Introduction to Juss-Buss Student Free Legal Aid Clinic Bojan Brkić, Ivan Rađa, Dora Uzinić (Split, Croatia): Practice, goals and vision of Legal Clinic of the Faculty of Law Split Barbara Preložnjak, Juraj Brozović (Zagreb, Croatia): A New Focus for Croatian Legal Aid System: encouraging early resolution and discouraging unnecessary litigation Ivana Gaćeša, Srećko Krivić, Kristina Martić, Ana Sokač (Zagreb, Law Clinic): Zagreb Law Clinic: mission, vision and future projections in providing legal aid

This conference is co-sponsored from the Croatian Science Foundation
Project: Transformation of Civil Justice under the Influence of Global and Regional Integration Processes. Unity and Diversity (6988)

Other donors: Faculty of Law, University of Zagreb; Ministry of Education, Science and Sport of the Republic of Croatia; University of Maastricht; Croatian Chamber of Notaries

CONTRIBUTION OF LEGAL CLINICS IN AVOIDING UNNECESSARY LITIGATION:

The Example of the Legal and Business Clinic at the University of Osijek

Lidija Šimunović Faculty of Law Osijek

PURPOSE OF CLINICAL LEGAL EDUCATION

PRACTICAL LEGAL ***TRAINING***

FREE LEGAL ADVICE

How we practise it within our Legal and Business Clinic at the University of Osijek?

QUESTIONS

- *Who are we?*
- *What we do?*
- *How we do it?*
- *In which way are we different from typical legal clinics?*

- *In which way we can help in avoiding unnecessary litigation?*

WHY WE HAVE ESTABLISHED THE CLINIC?

THE PURPOSE AND GOALS OF ESTABLISHING THE LBCUO:

SMALL BUSINESS CLINICS VS. LBCUO

Both provides advices related to commercial law

More then 150 of the small business clinics in the world which play an important role in promotion of clinical legal education.

Criticisms of this type of clinics are related to the methodology of work in mind that each client's problem is multidisciplinary by nature, i.e. it is the combination of problems from different fields and sciences not only related to one filed or science.

Solution: LBCUO introduces new methodologhy of work in small business clinics i.e. multidisciplinary clinical education. This lack is accomplished at the LBC by providing free legal and economic advices by working in the groups consisting of students of law and economics with the assistance and under the supervision of two mentors, one from the field of law and one from the field of economics.

C O O P E R A T I O N

The LBCUO is open for the further cooperation with new partners (institutions and practitioners) in any related fields and sciences.

FORMATION OF THE WORKING GROUPS

Each group usually contains:

- STUDENTS OF LAW
- STUDENTS OF ECONOMY
- STUDENTS' MENTORS
- 2 MENTORS (ONE FROM THE FIELD OF LAW AND ONE FROM THE FIELD OF ECONOMY)

VS.

- CLIENT

PROCESS INCLUDES NEXT STEPS:

INTRODUCTORY SEMINAR

(at the beginning of the academic year)

I. PRELIMINARY MEETING

(2 mentors introduce the facts of the case to students)

II. INTERVIEW „IN PERSON" WITH REAL CLIENT

(students + 2 mentors + client)

III. WORKING ON THE CASE

(students of law and economy in joint group + assistance and supevising of 2 mentors)

IV. LEGAL AND ECONOMIC ADVICE

(in written form)

WHAT TYPE OF ADVISING?

- **LEGAL + ECONOMIC ADVICE,**
- **COMMERCIAL AND COMPANY LAW**
- **TAX LAW**
- **COSTUMER LAW**
- **LABOUR LAW**
- **INSOLVENCY LAW**

Students help clients in:

- ❖choosing appropriate legal entity for setting up and running the business,
- ❖drafting articles of associtation, contracts and other types of agreements,
- ❖informing and advising parties regarding the rights, obligations and possibilities of success in each individual legal case,
- ❖making marketing plan for start-ups and companies,
- ❖making market analysis

The benefits of multidisciplinary clinical education

TO STUDENTS:

- developing and connecting practical knowledge of students with other sciences,
- using multiple knowledge and student's skills for solving the problems of clients,
- cooperating with other professions,
- networking and strengthening of student's personal competitiveness which is crucial for their further carrier.

TO CLIENTS:

- adressing and researching problems from different angle (from the other proffesions),
- solving problems using the knowledge of lawyers and economists,
- specialized, high quality, professional and confidential service

Contributions

THE LBCUO PURPOSE AND GOALS ARE:

I. PRACTICAL TRANING ,

II. FREE LEGAL AND ECONOMIC ADVICE,

III. AVOIDING UNECASSERY LITIGATION

CONTRIBUTION

I. PRACTICAL TRANINIG:

- „learning by doing" on the real cases,
- working in a multidisciplinary teams,
- better ranking of involved Faculties,
- improving the quality of teaching at the University in Osijek,

CONTRIBUTION

II. FREE LEGAL ADVICE:

- providing free legal and/or economic advice;
- focus on people who are unemployed and have lower economic status;
- improving and widening acces to justice to the clients related with commercial law;

CONTRIBUTION

III. AVOIDING UNNECASSERY LITIGATION:

❖**preventing litigation by advising clients about:**

-appropirate legal entity (e.g. craftsman vs. simply limited liability company),

-drafting suitable and „talior made" articles of association, contracts and agreements,

-informing praties regarding their rights, obligations, possibilities and legal options

-consulting about tax issues

THE OBSTACLES IN THE PROCESS

- finding target clients,
- cooperation between students of law and economy

FURTHER OBJECTIVES

- The Legal and Business Clinic is only the first step in experimental, clinical legal education at the University of Osijek.
- The idea is to involve, as many as available, academic staff, practitioners and students from different fields of science in the work of the Clinic, so as to enable collaborative problem solving to meet the complexity of future clients.
- The Clinic is open for new cooperation with other Faculties of Law in Croatia and partners who promote the same goals of clinical legal education.
- “open days” or „workshops” - network of multidisciplinary legal clinics as the Croatian brand.

THANK YOU FOR YOUR ATTENTION

Legal Clinics in the Time of Economic Downturn

Contribution to the discussion on how to employ legal clinics in order to avoid unnecessary litigation

Some courts are still heavily burdened with cases…

- A passage selected from the Judicial Reform Strategy for the period 2011-2015 (OG 145/10)…

♦ It is important to note as a result of the economic crisis, there has been a considerable increase in the number of cases in the courts.
♦ In the first quarter of 2011, the total number of civil litigious cases received on municipal was 47,004 or 49.5 percent more than was received the same period a year earlier.
♦ At the same time, the number of unresolved cases at municipal courts dropped by 4.6 percent in the first quarter of 2011 compared with the same period a year earlier.
♦ At commercial courts, the inflow of commercial litigious cases rose by 43 percent and stands at 8,101 cases. The inflow of bankruptcies and liquidation proceedings rose by 147 percent.

Legal problems need to be resolved on time!

- Every legal problem tends to escalate if it is not resolved on time
- Time = money?
- Different views - different interests
- Every economic crisis fosters debt cases

Let's communicate and resolve our problems without litigation!

- The fear of possible lawsuits
- The need to replace the fear with knowledge
- But…where to get knowledge free of charge?
- Few legal aid schemes of questionable functionality

Legal Aid

- Legal aid - essential to guaranteeing equal access to justice for all

Free Legal Aid

♦ The Ministry of Justice has created the IT system specifically for this purpose to provide systemic monitoring of the functioning of a free legal aid system in real time.

♦ the tariff for legal aid providers was increased which triggered a more active inclusion of providers in the system and consequently influenced the quality of the services that were provided.

♦ Further, the approval form for legal aid has been simplified

♦ The expert working group took the task of finalization of the Act on Free Legal Aid. The aim of the aforementioned amendments is to promote the legislative frame of free legal aid system, based on the experience acquired during two years of Act implementation. The amendments of the Act will be implemented by July 15 2011.

Legal Aid

- Some older statistics suggest that the budgets allocated to legal aid in Europe were on increase in certain states (2008-2010)
- However, the increase in the number of cases resulted in the decrease of the share of the budget allocated to a single case
- On the other hand, data from some other states show decrease as regards the quantity of cases and the amount of money allocated to a single case
- What available data says about Croatia?

Clinics

- Let us try to put Legal Clinics into the context....
- Several questions?
- Which cases are being appropriate for students and Legal Clinics?
- How can Legal Clinics help the people to resolve their cases easily and at very little expense
- Can clinics reduce the inflow of litigios cases?
- If the system is reluctant to help itself, is it up to Legal Clinics to stand in and show the way to go?

Steps

- First step - identifying legal problems which may be found in large numbers
- Debt collection / different misdemeanours / landlord - tenant disputes / CHF denominated loans / different administrative proceedings / tax cases etc.
- Examples from practice?
- Second step - learning everything about the problem, also about possible existence of new ways of dispute resolution (in house dispute resolution centers)

Steps

- Third step - looking for or building the caselaw which may prevent the case from going to court
- 4th - preparing draft model briefs which can be easily amended and used in different but similar cases
- Step five - advertisment of clinical services / cases can be resolved only if proper actions are taken within specific time limits!

Concluding Remarks

- The system of law and the State itself allow different legal actions
- Many of them do not have strong legal and factual basis - simply unfounded actions
- Both people who comply and those who do not comply with orders and injuctions often do so because they lack legal knowlegde
- Costs of taking the case to the court as well as the costs of enforcement proceedings may be very high and even higher than amount which is finally awarded in those proceedings
- No doubt - timely reaction may prevent unnecessary litigation
- Everybody is affraid of quality legal knowledge, even those parties who posses unlimited financial resources to take the case to the court

Legal Clinics in the Time of Economic Downturn

Contribution to the discussion on how to employ legal clinics in order to avoid unnecessary litigation

Maximizing Legal Clinics as a Tool for Decreasing Litigation

Jan-Willem Prügel

Index

- I. Objectives
- II. Legal Clinics in Germany
- III.Pro Bono Heidelberg
- IV. Overall Positive Effects
- V. Creating a Transnational Network

I. Objectives

- Explaining the German legal clinics system
- Showing examples for their effectiveness with regards to decreasing litigation
- Gathering forces for an international network of legal clinics to improve the current system

II. Legal Clinics in Germany

- Facts and Figures
- Legal Foundation
- Reception among Professionals

III. Pro Bono Heidelberg

- History
- Accomplishments
- Challenges
- Goals

IV. Positive Effects for..

- Students
- Assisting Professionals
- Society
- Legal System

V. Creating a Transnational Network

- Combining Experience and Resources
- Drafting Common Guidelines (Soft Law)
- Sharing Best Practices
- Offer a Forum for Exchange

A New Focus for Croatian Legal Aid System: encouraging early resolution and discouraging unnecessary litigation

Barbara Preložnjak, PhD
Juraj Brozović
Law Clinic, University of Zagreb

Task of modern legislations

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- European Court of Human Right (ECtHR)

Airey v. Ireland

"Article 6 ECHR guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations", it leaves to the State a free choice of the means to be used towards this end."

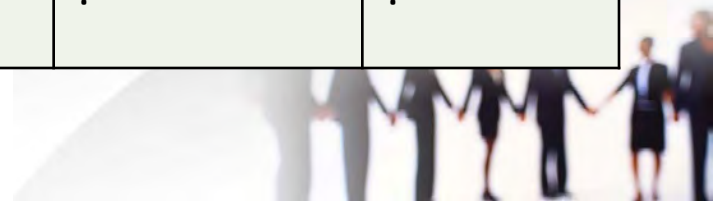
Croatian legal framework

- Constitution
- Law on Courts
- Law on Legal Aid (LLA)

Implementation

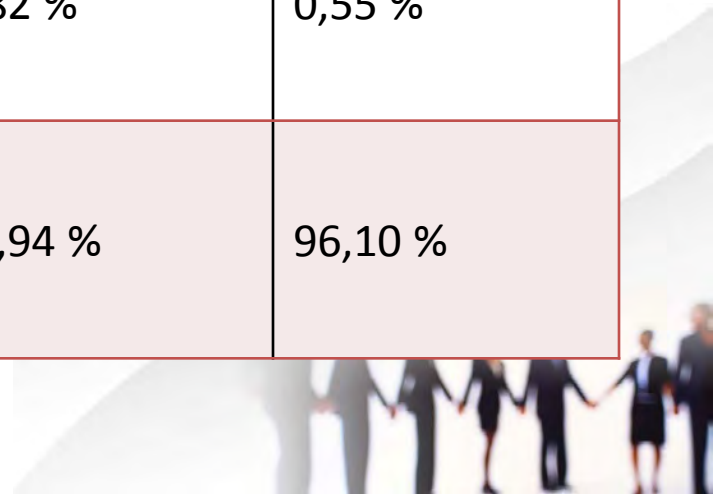
Year	Received cases at courts
2010	934.392
2011	992.890
2012	993.156
2013	937.968
2014	761.018

Year	Applications	SLA
2010	3.267	3.339 (81,84%)
2011	4.636	3.735 (80,56%)
2012	5.877	4.936 (83,94%)
2013	6.072	5.838 (96,14%)
2014	?	?



Implementation

Tipes of LA	2010	2011	2012	2013
PLA	18,15 %	5,28 %	7,62 %	3,85 %
PLA (LR)	1,96 %	9,8 %	9,82 %	0,55 %
SLA	81,84 %	80,56 %	83,94 %	96,10 %



LAA

Year	Primary Legal Aid	Secondary Legal Aid
2008, 2011	Limits legal aid to „proceedings.“	
	Limitations on the problems covered, means and merit test	
2014	All types of legal problems	Problem types of high welfare importance

- **Goldner v. UK**

"Entitlement to a fair trial also comprehended a right to make an informed decision as to whether to sue or not."

Best legal aid practice

- 2014, 2015?

- Encourage early resolution and discourage unnecessary litigation through PLA

- PLA ought to contain:

- information and education services,
- counselling,
- advice,
- negotiations,
- mediation.

Can it really work?

Kaplow & Shavell

- L. Kaplow & S. Shavell (1989): Legal Advice about Information to Present in Litigation: Its Effects and Social Desirability. 102 Harv. L. Rev. 567.

- Issues:

1. How does legal advice in litigation affect companies' decisions?
2. Does legal advice result with social desirable actions of the companies?

... the results

1. Legal advice results in favorable decisions for the companies
2. Legal advice results in socially desirable behaviour ONLY if the advice is given before the decision

- Is the concept also applicable to the legal advice provided by legal clinics?

What *should* be the result of clinical legal advice?

- Optimal solution for the parties envolved

- Social goals:

1. Access to justice
2. Avoiding unnecessary litigation

Methods of achieving the set goals

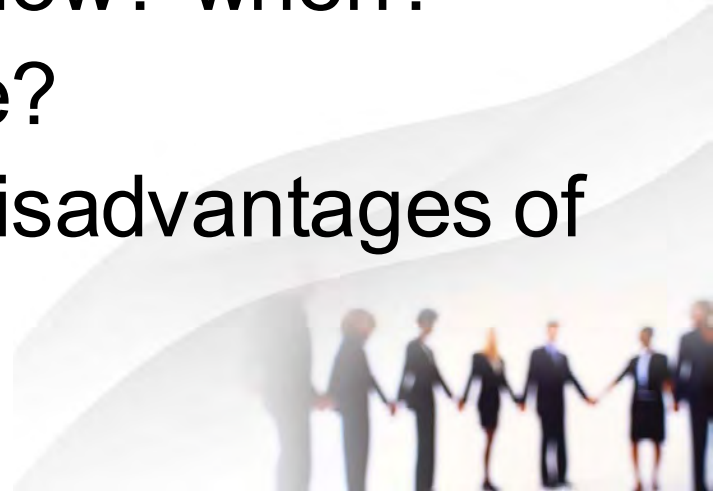
- Organizational measures
- specialization
- proper education

- Methods of legal advising
- full information
- absence of decision making

Example of Zagreb Legal Clinic

E.g. the case of patient claiming that he/she is a victim of negligence (medical malpractice)

- the information provided
- who? in regard to whom? how? when?
- which options are available?
- what are the advantages/disadvantages of each option?



…

- things to avoid:
- act as a (pre)judge
- disregard the fact that some information may be missing
- show preference in regard to a certain option
- encourage unrealistic goals due to empathy

Challenges

- When can the information be considered full?
- What if probability of winning the case is equal to the probability of losing?
- How to react if the party is willingfully heading to a wrong direction?
- How to reconcile parties' personal concept of justice and the one set by the legal order?

Introduction to Juss-Buss

Student Free Legal Aid Clinic

By
Mathias Smith-Meyer
William Diego Tidemann-Andersen
Hana Temsamani

jussbuss.no

The Pioneering Period

- It is often said that Juss-Buss is a child of the student rebellions of 1968, and there is some truth in this.
- Survey of people's legal aid needs was published in a study by Eskeland and Finne "Rettshjelp" (Legal Aid).
- An assessment was made of the idea of setting up a legal aid clinic linked to the Faculty of Law at the University of Oslo.

Introduction to Juss-Buss

History and Development

- Juss-Buss (The Law Bus) was founded in 1971 with three main objectives:

1. Assess the need for legal aid among the communities of the Oslo suburbs.

2. Provide legal guidance and information to enable people to start resolving their own legal problems.

3. Train law students as legal aid workers.

jussbuss.no

Introduction to Juss-Buss

Organizational structure

- Student-run legal aid clinic with a flat organizational hierarchy.
- 30 case workers at all times:
  - Three generations of case workers
    - 12 months full time
    - 6 months part time
- Academic leader, managing director and administrative assistant.
- Four specialized groups:

1. Immigration law
2. Prison and Tenacy law
3. Debt and Family law
4. Labour and Social Security law

jussbuss.no

Methods

Juss-Buss

Case work

- Targeting clients:

  - In order to provide legal aid to individual members of sections of society who are poorly served by existing legal aid services, we aim to achieve this aim by means of our case work.

  - Outreach work to target clients who have a undiscovered or unsolved need of legal aid.

- Approximately 5.500 cases each year. A total of 5.725 cases in 2014.

jussbuss.no

Legal Policy and Reform work

- The idea of Juss-Buss has been to become aware of the social problems that lie behind the need for legal aid and to convert our experience from case work into demands for legal reforms.

- Generating awareness: We assume the role of a spokesperson for our client groups.

- Secure legal rights and access to the legal system for all: Our experience is that the existing free legal aid scheme is too narrow and strict.

jussbuss.no

Legal Policy and Reform work

- Dialogue with the government and other key opinion makers.
- Participating at open meetings and writing consultation statements to relevant legislative proposals.
- Writing articles in the mass media and radio and TV appearance.
- Debates and seminars to attempt to raise awareness.
- Demonstrations in order to support current demands for re

Legal Policy and Reform work

- Dialogue with the government and other key opinion makers.

jussbuss.no

Legal Policy and Reform work

- Participating at open meetings and writing consultation statements to relevant legislative proposals.

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Legal Policy and Reform work

- Writing articles in the mass media and radio and TV appearance.

Legal Policy and Reform work

- Debates and seminars to attempt to raise awareness.

Legal Policy and Reform work

- Debates and seminars to attempt to raise awareness.

Thank you for your attention!

Questions?

www.jussbuss.no

LEGAL CLINIC OF the FACULTY OF LAW SPLIT

Practice, goals and visions

GENERAL

- Legal Clinic is an organizational unit of the Faculty of Law which, in accordance with its general acts, provides primary legal aid
- Registered as a provider of legal advice and assistance at the Ministry of Justice of Croatia
- **Primary legal aid** with a focus on *general legal information* and *legal advice*

Our motivation

- Economic crisis
- Massive unemployment
- Expensive legal services
- General discontent
- Lack of practice for students

The initial group

Our goals

The main objectives of the Clinic are:

- contribution to the legal aid system in Croatia
- enabling students to use the acquired knowledge and to gain practical skills
- development of students' sense for activism and team work
- acquirement of sensibility for social engagement
- volunteering for public benefit and pro bono legal work in the context of national legal aid and assistance system

Organizational structure

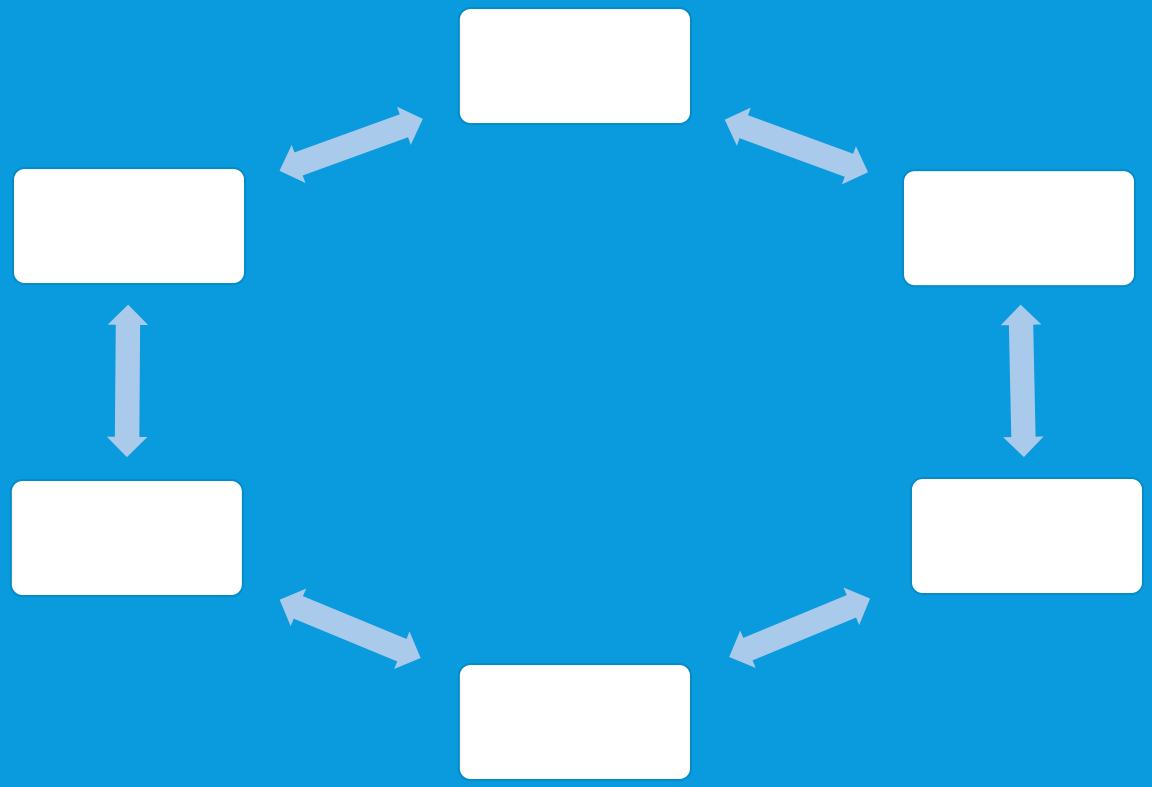
- Five working groups:

1. Civil Law Group
2. Distraint Law Group
3. Labour Law Group
4. Administrative Law Group
5. Family Law Group

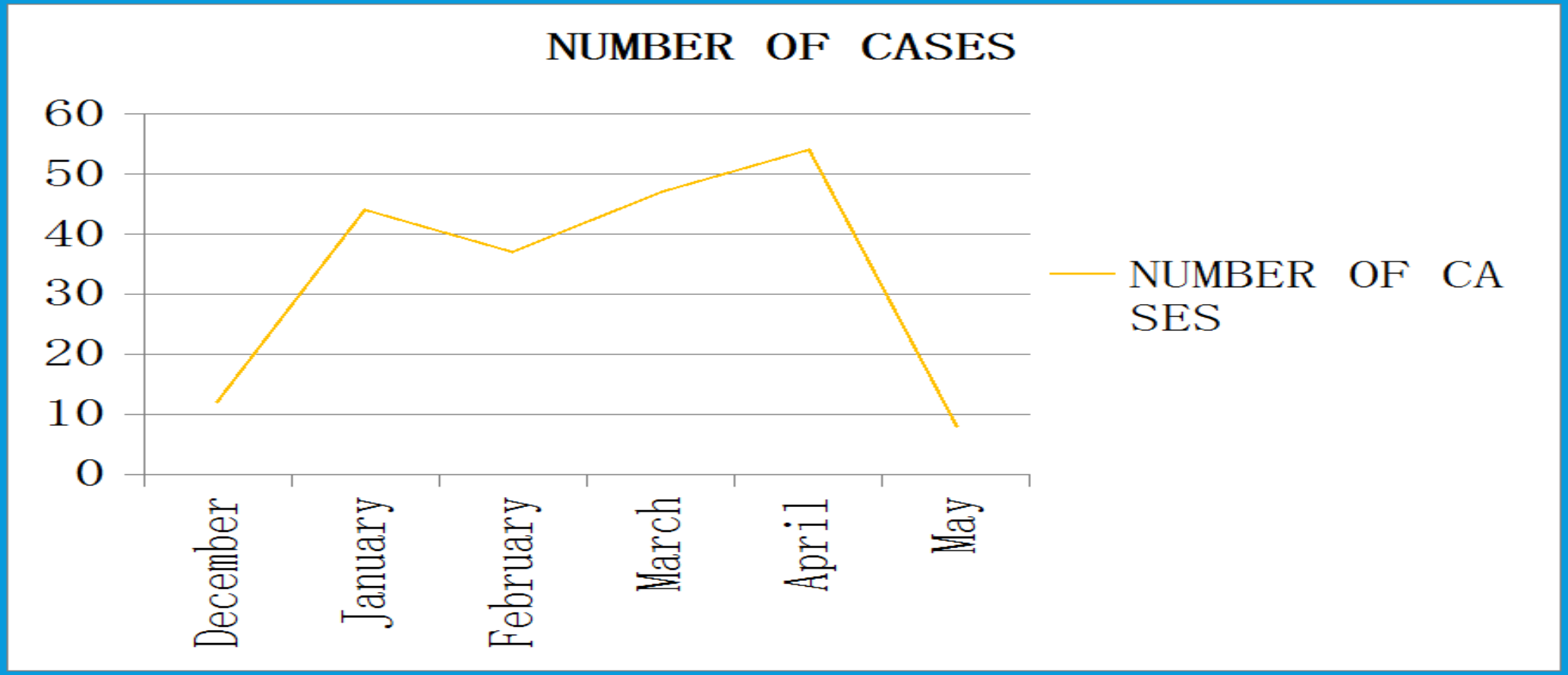
Organizational structure

- The Clinic hierarchical structure from top to bottom includes:
- **Director and Deputy Director of the Legal Clinic**
- **Academic mentors and external associates**
- **Student administrators**
- **Student mentors**
- **Student clinicians**

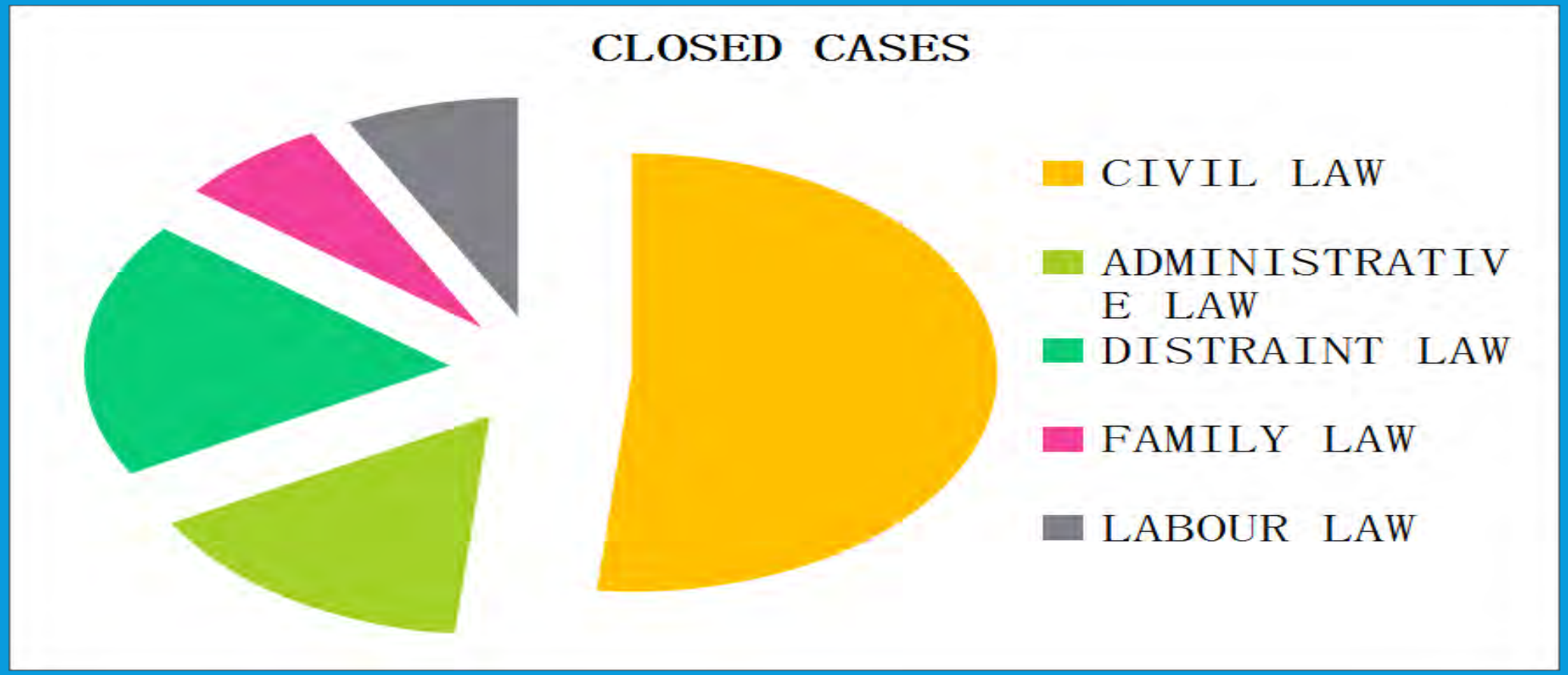
Organizational structure



OUR PRACTICE SO FAR



OUR PRACTICE SO FAR



OUR PRACTICE SO FAR

- organized trips to neighbouring cities (Drniš and Makarska)
- organized visits to Association of veterans of 4th Guard Brigade

FUTURE...?

Main objectives:

- Expansion of the cadre of trained students clinicians
- Contribute positively to the free legal aid system in Croatia
- Inform citizens about our work and their rights
- Expand our work by visiting more cities in Croatia
- Find adequate premises adjusted to the needs of working groups and clients

MORE INFO AND CONTACT

- **WEB PAGE**

http://pravnaklinika.unist.hr/

- **E-MAIL**

info.pravnaklinika@gmail.com

- **TELEPHONE NUMBER**

+38521393591

- **ADDRESS**

Domovinskog rata 8, 21 000 Split, Republic of Croatia

THANK YOU FOR YOUR ATTENTION!

Legal Clinic

What is Legal Clinic?


REPUBLIKA HRVATSKA
SVEUČILIŠTE U ZAGREBU
PRAVNI FAKULTET
PRAVNA KLINIKA

Concept

Purpose

- Introducing legal reality
- Create a sense of community service
- Open space for their own initiative
- To provide a useful service to users

Basic ideas

- 1. Autonomy and self-government
- 2. From theory to specific legal work
- 3. To help where needed – community service
- 4. Critical inclusion in the system of free legal aid
- 5. Cooperation with other providers
- 6. Learning from similar institutions
- 7. Continuity

- Legal aid is provided to certain particularly vulnerable social groups and people of lower economic opportunities. In this respect, Legal Clinic provides citizens with the **legal opinions, general legal information and help in preparing variuos submissions**. Clinic is also involved in the discussion of the current problems in society and seeks to introduce the citizens to the existing problems and to support the necessary reforms.
- In its work, the Clinic handled the Law on Legal aid and Study Regulations.

We are proud to say that people recognize the Legal Clinic as a place where they can come if they need legal help. In the future we will continue to try to justify given confidence.

FEEDBACK

STUDENTSKI LIDER KLUB
. GENERACIJA

PRAVNA KLINIKA

Studenti pomažu egzistencijalno ugroženima

Na Pravnoj klinici Pravnog fakulteta Sveučilišta u Zagrebu volontiraju 33 studenta koji u sklopu izbornog predmeta i praktične nastave dijele pravne savjete građanima koji ne mogu platiti odvjetnike

piše **KATA PRANIĆ**

Otkako je prošle godine počela s radom, Pravna klinika Pravnog fakulteta Sveučilišta u Zagrebu volonterski pomaže građanima koji nemaju novca za plaćanje odvjetničkih usluga. Pravnu pomoć pružaju 33 volontera, studenti pete godine prava, ali i oni s treće i četvrte godine. Podijeljeni su u šest radnih grupa: Zaštita od diskriminacije i prava manjina, Zaštita prava djece i obiteljsko uzdržavanje, Zaštita prava pacijenata, Zaštita žrtava i svjedoka kaznenih djela, Grupa za radno pravo i zaštitu prava azilanata. Za taj je posao nužna motivacija i dobra volja studenata te osjetljivost za socijalno ugrožene. Studenti volonteri samostalno kontaktiraju sa strankama, primaju predmete, obrađuju ih i odlučuju kakav će pravni savjet dati ili podnesak napisati. Taj je posao i praktični dio nastavnog procesa jer je riječ o izbornom kolegiju na petoj godini prava.

Njihov rad nadgledaju voditelji klinike **Alan Uzelac**, profesor na Katedri za građansko procesno pravo, te akademski mentori, nastavnici, asistenti i znanstveni novaci Pravnog fakulteta.

O Pravnoj klinici razgovarali smo s **Barbarom Preložnjak** s Katedre za opću teoriju prava i države i **Sladanom Aras** s Katedre procesnog i građanskog prava, pomoćnicama voditelja Pravne klinike i profesora na Katedri za građansko i procesno pravo Pravnog fakulteta u Zagrebu te **Ognjenkom Manojlović**, apsolventicom prava, akademskom mentoricom grupe za odnose s javnošću i studentima volonterima.

Izjava o tajnosti - Pravna klinika ustanovljena je kao kolegij Praktične vježbe - Pravna klinika, no Pravna klinika predstavlja zakonski oblik pružanja besplatne pravne pomoći u skladu s odredbama Zakona o besplatnoj pravnoj pomoći te je pri Ministarstvu pravosuđa registrirana kao ovlašteni pružatelj besplatne pravne pomoći. Studenti pete godine pravnog studija obvezni su odraditi stručnu praksu, a jedan od oblika prakse je i Pravna klinika. Moja je uloga koordinacija rada studenata, organizacija njihova odlaska na stručnu praksu u udruge civilnog društva s kojima surađujemo i pružanje pomoći pri uključivanju u projekte važne za razvoj rada Pravne klinike – kaže Barbara Preložnjak s Katedre za opću teoriju prava i države.

Iako su studenti samostalni u obradi predmeta i donošenju pravnih mišljenja, mentori im u tome pomažu. No studenti mogu pružiti samo primarnu pravnu pomoć i ne mogu zastupati stranku na sudu jer je to odvjetnički posao.

- Kad studenti u dovoljnoj mjeri obrade neki predmet, sastanemo se i razgovaramo, a ako su krenuli pogrešnim putem, moj je posao vratiti ih na pravi. Na početku je bilo teško i meni i njima, ali vrlo sam zadovoljna jer su samostalni pa je moja uloga sve manja - kaže Sladana Aras s Katedre procesnog i građanskog prava.

Na Pravnoj klinici su se dobro snašli i entuzijasti s treće i četvrte godine prava, a svi oni obavljaju poslove adekvatne njihovu stupnju pravnog obrazovanja. Iako se **Ana Bačić**, studentica pete godine prava, trenutačno bavi zaštitom svjedoka kaznenih djela, njen izbor je trgovačko pravo koje će joj biti specijalizacija jednom kad postane odvjetnica.

- Mentorica sam u svojoj grupi i iznimno mi je zanimljiva i korisna praksa na Pravnoj klinici – kaže Ana koja na volonterski posao odvaja deset sati na tjedan. S kolegama razmatra predmete i priprema pravni savjet za stranke. Svaki volonter je obvezan jedan dan na tjedno raditi tri sata, u što se ne ubrajaju sastanci grupe i oni s mentorom. Zbog toga odvajaju i svoje slobodno vrijeme na proučavanje predmeta, što im je, kažu, zadovoljstvo.

BESPLATNA POMOĆ

Popularizacija Klinike

Pravna klinika Pravnog fakulteta Sveučilišta u Zagrebu osnovana je 2010., a pruža pravne savjete osobama slabijega imovnog statusa i ranjivim socijalnim skupinama te pomaže u sastavljanju raznih podnesaka u upravnom i drugim postupcima. Kako bi javnost doznala koja je uloga Pravne klinike brine se Ognjenka Manojlović koja je mentorica grupi odnosa s javnošću i koordinira sadržaj web-stranice.

- Moj primarni cilj je popularizirati postojanje Klinike, a sekundarni je obrazovanje javnosti da postoji potreba za pružanjem besplatne pravne pomoći. Dugoročno radimo nešto pozitivno za hrvatsko društvo; zaštitom prava na maksimalnoj razini povećavamo demokratizaciju.

Mare Maltarić, studentica pete godine prava, pomaže azilantima. Budući da je potpisala izjavu o tajnosti, najzanimljivije podatke ne smije otkriti.

Dosta slučajeva - Zasad sam upoznala tri slučaja, to su mladi ljudi, Arapi tragične sudbine. Moj je posao napraviti neku vrstu upitnika o njihovu mišljenju o zemlji iz koje su pobjegli i provjeriti, preko nevladinih udruga, objektivnu situaciju u tim zemljama te pripremiti izvješće – objašnjava Maltarić koju najviše zanima kazneno pravo, a ljeto namjerava provesti na dvomjesečnoj pravnoj praksi u Americi.

Zaštitom prava pacijenata bavi se **Juraj Brozović**, student treće godine, koji je bio koordinator volontera na Svjetskom kongresu medicinskog prava i odlučio se i za volonterstvo na Pravnoj klinici.

- Ono što ne mogu riješiti ja, obave stariji studenti. Na Pravnoj klinici namjeravamo provesti vremena koliko mi to fakultetske obveze dopuste – kaže Juraj kojega zanima kazneno i medicinsko pravo, a još mu je rano reći hoće li biti odvjetnik ili sudac.

Ivan Krešić, zadužen za zaštitu prava djece i obiteljsko uzdržavanje, student je pete godine prava, a odabrao je trgovački smjer. Trenutačno je zaokupljen pravnim predmetom žene koja već deset godina vodi parnicu u vezi s nasiljem u obitelji, razvodom braka i alimentacijom.

- Teška je to priča, ima mnogo dokumenata i nadam se da će obrada biti gotova sljedeći tjedan. Mi jedino možemo ponuditi upute kako će se ponašati na sudu gdje gospođa ne možemo zastupati, a i kad je riječ o podnescima, tu smo ograničeni – objašnjava Krešić koji je prije volontirao u Hrvatskom helsinškom odboru i Hrvatskom pravnom centru. Mišljenja je da je volontiranje na Pravnoj klinici dobro iskustvo zbog toga što se student mora sam snaći, utvrditi što je bitno, a što ne.

Volonterima Pravne klinike nedavno se pridružila i **Irena Čaček**, studentica pete godine prava, koja je u grupi za zaštitu radnog prava i za odnose s javnošću.

- Imamo dosta slučajeva, a Pravna klinika je prilika da vidimo što nas u poslu čeka sutra. Vidim se u odvjetništvu, a ova je praksa izvrstan uvid u budući posao. Dosad sam radila na jednom kompliciranom slučaju i jednoj ovrhi, gdje smo se dosta angažirali oko primjene novog zakona – kaže Čaček. U razgovoru s volonterima osim motivacije, znatiželje i empatije za siromašne građane vidljiva je i ambicioznost studenata.

- Nadam se da ću u Pravnoj klinici volontirati do kraja studija jer me zanima taj oblik prakse. Zanima me upravno pravo i javna uprava, a htjela bih povezati zaštitu ljudskih prava i neke međunarodne mehanizme zaštite ljudskih prava na budućem poslu - **Silvija Koračević**, studentica četvrte godine prava, predstavnica Grupe za zaštitu od diskriminacije i zaštitu okoliša.

Structure and organization

- Group to help asylum seekers and foreigners
- Group to combat discrimination and the rights of minorities
- Group for the rights of children and family maintenance
- Group for the protection and assistance to crime victims
- Group to protect the rights of workers
- Group for the rights of patients
- Group to help citizens in enforcement proceedings

Structure and organization

- Students- Clinicians
- Students-Mentors
- Academic mentors- Leadership and assistants

- External mentors:
- - Lawyers
- - Former clinicians

- At present, Legal Clinic has around 100 volonteers- clinicians.

- User (party)
- Clinician
- Administrator
- Student reporter
- Group

- User (party)
- Clinician
- Academic mentor
- Student mentor

Resident clinic

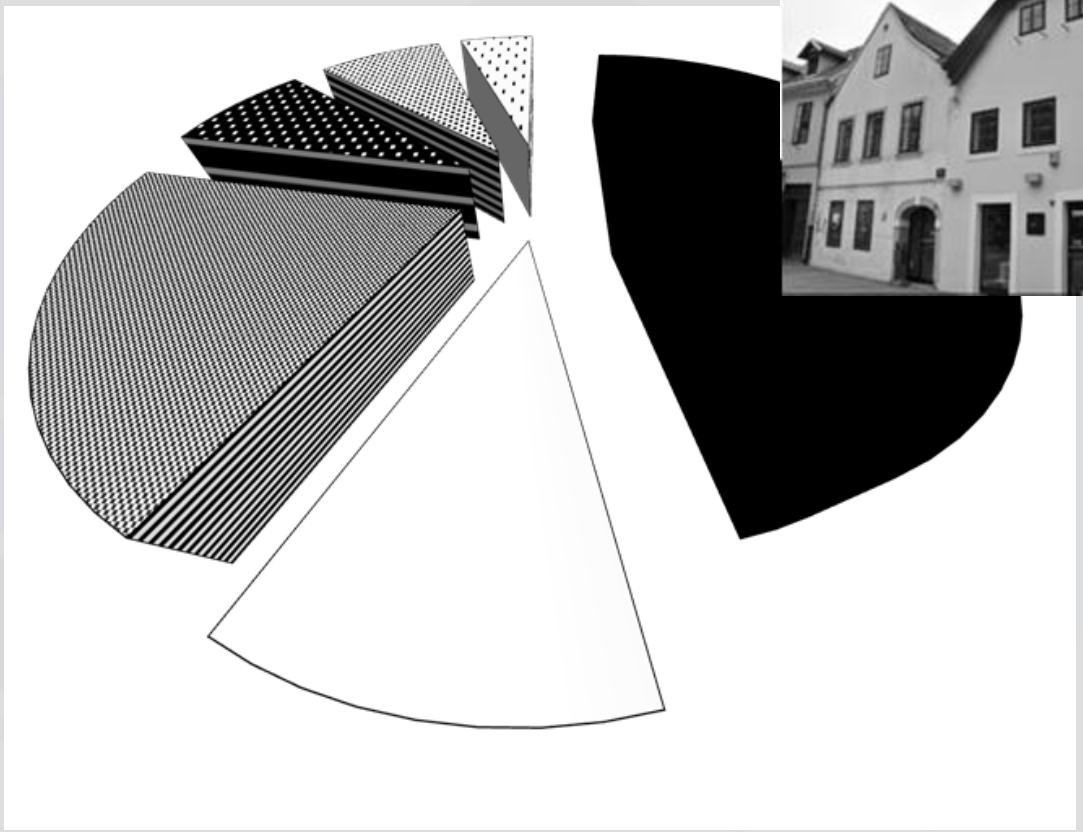
Training

External clinics

Legal reforms

Street law

Admin and PR



STATISTICS- LEGAL OPINIONS

YEAR →	2011/2012	2012/2013	2013/2014	2014/2015
Civil cases	412	870	1085	1743
Administra t-ive cases	96	265	242	475
Penal cases	24	55	80	119
TOTAL →	532	1190	1407	2337 so far..

Pro Bono

- Pro bono is the official journal of the Legal Clinic of the Law Faculty, University of Zagreb, which was first published in September 2012. Published once pre semester.

- Editorial Board consists of student – volunteers from Legal Clinic in Zagreb, who achieved significant results.

- Among notable successes are the reception of the Office of the President and the cooperation with the city of Zagreb, led by major Milan Bandić.

- The magazine is divided into 5 units.
- **The magazine is funded entirely from funds donated for this purpose. The magazine is completely free and citizens can look up for a copy in Legal Clinic, National and University Library and on the website of the Legal Clinic.**

Pro Bono visiting mayor Milan Bandić

Reception in the office of the Croatian President

EXTERNAL CLINICS

Triple A for Citizens

- 17 rounds of external clinics
- 15 visited cities
- 500 clinicians
- 702 received cases
- project funded by ECAS/Triple A

2012/2013

2013/2014

2014/2015

	2013/2014	2014/2015
GRAD	NUMBER OF RECEIVED CASES	NUMBER OD RECEIVED CASES
Karlovac	22	11
Vrginmost	3	-
Zlatar	28	23
Vrbovec	14	27
Križevci	31	32
Koprivnica	44	39
Hrvatska Kostajnica	7	-
Dvor	4	-
Split	26	31
Zadar	9	12
Čakovec	27	46
Varaždin	26	70
Rijeka	12	13
Novska	28	31
Bjelovar	13	22
Županja	-	17
Kutina	-	29
Makarska	-	9
UKUPNO:	294	408

Photos from external clinics

STUDY VISIT
London&Dublin 1.-8. March

Public and Private Justice 2014

PROCEDURAL HUMAN RIGHTS AND ACCESS TO JUSTICE IN THE WORLD OF EMERGENCIES AND ECONOMIC CRISIS , IUC Dubrovnik, 26-30 May 2014

Questions?

Thank you for your attention!