

Pro Bono Practices and Opportunities in Belgium

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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This chapter describes the current *pro bono* system in Belgium,¹ including current laws, regulations and practices, and opportunities for international law firms to expand their *pro bono* practices in Belgium.

I. Legal Services and the Legal Profession in Belgium

Belgian law is practiced in two languages, French and Flemish, and regulated by two Bars, the Francophone Order (*Ordre des Barreaux Francophone et Germanophone*) and the Flemish Order (*Ordre van Vlaamse Balies*) (hereinafter, the “Orders”).² As a result, Belgium’s *pro bono* system is governed by one law, but there are two administrations responsible for its application. In practical terms, the two administrations are identically organized and governed by the same principles; thus, they are treated as one in this chapter.

The Belgian Constitution grants all people a right to legal assistance.³ Legal assistance is provided by the Legal Assistance Commission (the “LAC”), which maintains offices in each of Belgium’s 28 court districts.⁴ The amended Judicial Code of 1967⁵ provides for two complementary forms of legal assistance in civil, criminal, and administrative matters: legal advice (both primary and secondary),⁶ and legal aid.⁷ The LAC is responsible for and organizes the primary legal advice centers, which are staffed by lawyers. Secondary legal advice and representation is organized by a legal assistance bureau set up within each of the local bars.⁸

The Orders require that every trainee lawyer provide legal assistance *pro bono* during their three-year “apprentice” period.⁹ The legal services provided by trainee lawyers are overseen by both the trainee’s supervisor and an official of the LAC in that court district.

In addition, *pro bono* legal assistance work can be undertaken by qualified lawyers who are paid by the state through the intermediary of the Orders. Compensation levels are set by the state and depend on a point system by which the value of services is determined annually based on the entire legal assistance budget and the number of matters in that year.¹⁰ In recent years, the

¹ In Belgium *pro bono* is referred to as *pro deo*, which is Latin for “free of charge.”

² The French Order also regulates the practice of law in German for the German-speaking minority of the country.

³ Article 23, available at: http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/grondwetEN.pdf.

⁴ District commission offices are comprised of representatives of the Bar, public welfare centers, and approved legal assistance organizations.

⁵ With reference to legal aid, the most recent changes were introduced by the law of November 23, 1998.

⁶ See sections 446 *bis* and 508/1 to 508/23 of the Judicial Code, as well as the implementing Royal Decrees. See also *Legal Aid: Belgium*, European Judicial Network in Civil and Commercial Matters, available at: http://ec.europa.eu/civiljustice/legal_aid/legal_aid_bel_en.htm.

⁷ See sections 664 to 699 of the Judicial Code.

⁸ The Brussels Legal Assistance Bureau is located at Rue de la Régence, 63, 1000 Bruxelles (1st floor). More information is available at: www.aidejuridiquebruxelles.be.

⁹ Trainee lawyers have completed their studies and passed all requisite exams but are required to complete a practice period of three years under the supervision of a qualified attorney before being allowed to practice independently. To fulfill their *pro bono* requirement, most trainee lawyers work in the areas of criminal, immigration, and family law, mainly due to the sheer volume of such cases. This is often true even if their ultimate areas of practice are completely unrelated to the experience gained from their *pro bono* work.

¹⁰ In 1983, (the first year in which lawyers were compensated) the legal assistance budget was the equivalent of €743,680.57; for the 2007-2008 legal year, the amount allocated was €54,220,000.00. The value of one point was €23.25.

level of remuneration, on the whole, has decreased as the number of cases has increased. Under the Orders' rules, lawyers cannot accept contingency fees from clients, nor can they seek further remuneration from an indigent client who receives complete aid.¹¹

A. Legal Advice

Primary legal advice is available to individuals only and provides an initial legal assessment, practical information, legal information, or a referral to a specialized body or organization.¹² In practice, assistance is typically dispensed within a set time frame of 10-15 minutes per person. Historically, this service was provided for a flat fee, but as of January 1, 2004, it is a free service for all. Primary advice is granted by a lawyer who is a member of an Order and has been authorized or designated by that Order. The Order supervises the lawyer in the performance of his or her duties and monitors the quality of the advice provided. A lawyer may be disbarred for a breach of these duties.

When primary legal advice results in a referral to a specialized body or attorney, the service subsequently provided is secondary legal advice. This assistance is also available only to individuals and involves more detailed legal advice or assistance, including help with formal proceedings, assistance with court actions, and legal representation.

Typically, a recipient of secondary legal advice has received a referral from the lawyer who provided primary legal advice. The same lawyer cannot be both the primary and secondary advisor in a case. By law, an individual could choose any of the attorneys qualified by the Orders as his secondary advisor, but in practice the lawyer selected is typically someone who is on-duty according to the LAC's daily roster, which designates lawyers available for *pro bono* purposes on a rotating basis, as determined by the Orders. Individuals can also go directly to individual attorneys, who can then make the request for legal aid if they are willing to take the case. These lawyers must also be qualified by the Orders to give secondary legal assistance. In cases of an emergency, individuals may also seek help from his or her court district's after-hours providers.

B. Legal Aid

Legal aid is typically granted within the context of secondary legal advice, but it is also available in other circumstances. Receiving legal aid results in partial or complete exemption from paying legal fees. Eligibility is determined by reference to the applicant's financial means and social situation, and legal aid covers the costs of both judicial and extrajudicial proceedings. This system ensures that indigent clients have full access to justice and legal representation by a qualified lawyer who is paid by the state. The basic qualification requirements are proof of low income and evidence of a well-founded claim.¹³ Access to legal aid is available to Belgian nationals, foreign nationals in accordance with international treaties, all nationals of member states of the Council of Europe, and foreign nationals in immigration proceedings.

Individuals can apply for legal aid after a referral for secondary legal advice, or after seeking counsel through normal channels. The process for requesting legal aid is the same in both instances: the lawyer or the petitioner presents a request to the legal aid office of the court in

¹¹ See section 459 of the Judicial Code.

¹² See section 508/1 of the Judicial Code; see also *L'aide Juridique: Un Meilleur Accès à la Justice*, Service Public Fédéral Justice, available at: http://www.just.fgov.be/img_justice/publications/pdf/65.pdf.

¹³ See Sections 667 and 668 of the Judicial Code.

which the action is being brought or where the aid is to be provided.¹⁴ The request for legal aid must be accompanied by proof of income. As of September 1, 2010, single individuals without dependents must have net monthly earnings of less than €878 to receive a complete exemption from fees.¹⁵ To qualify for partial aid, the same individual may only earn between €878 and €128 per month.¹⁶ Legal aid is also available to those of unsound mind and minors.

Legal aid is available in the following types of cases:

- procedural steps related to applications that have been referred to or are pending before an ordinary or administrative court or panel of arbitrators;
- procedural steps relating to the enforcement of judgments and decisions;
- application proceedings;
- appeal proceedings;
- procedural steps decided by judges or requiring action by a professional or an official; and
- family mediation proceedings.

C. Legal Insurance

Under Belgium's current system, those who do not meet the eligibility criteria for legal aid must cover the costs of an attorney themselves. However, in June of 2006, the Minister of Justice and the Minister of Budget and Consumer Affairs proposed the creation of a new system of legal insurance designed to offer the middle class legal protection.¹⁷ The scheme came into force on February 27, 2007. For a minimal premium, (€44 or less a year, with a maximum excess of €250) this insurance covers a variety of legal expenses.¹⁸ Companies offering the new policies receive incentives from the state in the form of tax benefits.¹⁹

¹⁴ See Section 670 of the Judicial Code.

¹⁵ The monthly salary ceiling for single individuals with a dependent or cohabitants, and families is €1,104.00 for complete aid and between €1,104.00 and €1,348.00 for partial aid. "*Conditions d'accès à l'aide juridique de deuxième ligne et à l'assistance judiciaire*", (*Seuils en vigueur du 1er septembre 2009 au 31 août 2010*), available at: www.aidejuridiquebruxelles.be.

¹⁶ See Service Public Fédéral Justice, *L'aide Juridique: Un Meilleur Accès à la Justice* (2009), available at: <http://www.just.fgov.be>.

¹⁷ *Le Soir*, June 2, 2006, at 5.

¹⁸ Press Release, Council of Ministers, Assurance Protection Juridique (June 2, 2006), available at: <http://www.presscenter.org>. The insurance only covers cases where the costs of the claim exceed €5,000; this threshold is reduced to €750 for divorce proceedings and increased to €12,500 for certain contractual claims and certain penal proceedings. For further information, see the website of Assuralia, the trade association of Belgian insurance companies, at <http://www.assuralia.be>.

¹⁹ See *supra*, note 413.

II. *Pro Bono Opportunities in Belgium*

In 2003-2004 legal aid was granted in approximately 99,000 *pro bono* matters, an increase of more than 60% from 1999-2000. This number is expected to have increased even more following the introduction of new eligibility thresholds in 2005.²⁰

Nothing in the Judicial Code nor in the Code of Conduct of the Orders requires a lawyer to request payment for services. Thus, while the Belgian system of *pro bono* covers individuals receiving a free initial consultation and/or being granted legal aid, a law firm may provide free legal advice to an individual, a company, or a non-governmental organization (“NGO”) regardless of their ability to pay, and without any prohibitions against doing so for free or for a set fee.²¹ Increasingly, American law firms are providing such services to the many NGOs in Brussels.²²

Pro bono services have been provided by law firms to NGOs seeking legal advice on matters relating to European law or information on how to lobby for or against initiatives of European institutions. The main beneficiaries of such services have been groups like Amnesty International, Human Rights Watch, and Friends of the Earth. Moreover, Brussels can be used as a base for launching human rights cases both before the International Court of Human Rights and the European Court of Human Rights.

Examples of these more expansive forms of *pro bono* undertakings include *Avocats Sans Frontières*, a Belgian association that seeks to provide legal assistance in sensitive cases around the world.²³ More recently, a Brussels-based project investigated *pro bono* opportunities for U.K. lawyers in Brussels.²⁴ In 2004, that project yielded a report identifying specific needs and possibilities for firm involvement.²⁵ While there were plans to use the project to help British lawyers coordinate their efforts in Brussels in the future, it appears as though this has not yet come to fruition. U.S.-style *pro bono* practices have also been undertaken in Brussels, mainly through international and American law firms based there.

III. *Prohibition Against Advertising*

One issue that indirectly affects *pro bono* practice in Belgium is the restriction on legal advertising. Lawyers in Belgium are severely restricted as to the form of advertising or business development initiatives they may undertake. The only permissible advertising is what is necessary to give the public information pertaining to the legal practice of the lawyer or firm. The names of past or current clients cannot be publicized. Further, it is illegal to solicit legal work in

²⁰ See Press Release, *Ordre des Barreaux Francophone et Germanophone, Aide Juridique: l’Etat Belge Condamné* (Mar. 23, 2005), available at: <http://www.avocats.be>.

²¹ The law firm can provide the service free of charge, for a minimum charge, or for an upfront fee.

²² For instance, American law firms that encourage *pro bono* work in the U.S. also provide such services in Brussels. There is also the U.K. Solicitor *Pro bono* Group (now LawWorks) and various U.K. barrister groups that provide legal advice in matters affecting Brussels, the European Commission, the European Court of Justice, and the European Court of Human Rights.

²³ For further information, the group’s website is: <http://www.asf.be>.

²⁴ The “Brussels *Pro Bono* Project” and the “European *Pro Bono* Network” were set up by Andrew Jackson and U.K. trainee solicitors from the following firms: Eversheds, Linklaters, CMS, NabarroNathanson, Dechert, Lovells, Coudert Brothers, Clifford Chance, and Mayer Brown Rowe & Maw, under the auspices of the former Solicitors *Pro Bono* Group (now LawWorks).

²⁵ Solicitors *Pro Bono* Group, *The Brussels Pro Bono Project* (2004).

any form, either by going to the workplace or home of a potential client, or by sending an unsolicited description of potential work (unless it has been requested by the individual).

Since advertising is only permissible in order to convey information that is strictly necessary, advertising *pro bono* services in some circumstances may be beyond the scope of what is legally permissible. Although firms can advertise specialties (*e.g.*, securities) subject to approval by the Orders, *pro bono* work does not fit neatly into that form of targeted solicitation.

IV. Conclusion

Although *pro bono* work in Belgium takes place in a regulated environment, there are opportunities for law firms, especially international ones, to provide free legal advice outside of this system. It is clear from recent developments that there is much *pro bono* work that can be undertaken in Belgium, especially in the city of Brussels.