

Pro Bono Practices and Opportunities in the Czech Republic

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

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The return of democracy to the Czech Republic has brought with it a variety of legislation governing legal aid. However, there are currently no uniform procedures for granting legal aid, and calls for a comprehensive legal aid act have gone unanswered. Not surprisingly, *pro bono* work in the Czech Republic is minimal. However, recent trends and improvements are cause for cautious optimism. As the Czech Republic moves away from its Communist past and continues to conform its legal system to European Union (“EU”) and other international obligations, legal aid reform efforts have made headway. Improvements have been made toward streamlining and standardizing the processes through which parties may request legal aid from the courts and bar association. Additionally, several NGOs have become firmly established in the country, providing free legal assistance, particularly in the areas of asylum and immigration. Finally, a few large international law firms have also begun to take on *pro bono* projects.

I. *Legal Services and the Legal Profession in the Czech Republic*

The Czech legal system is a civil law system based on the Austro-Hungarian codes. The current Constitution of the Czech Republic was adopted on December 16, 1992, just before Czechoslovakia peacefully split into the Czech and Slovak republics.¹ The Czech Republic joined NATO in 1999 and the European Union in May, 2004, developments which have brought new international influences and obligations to the legal structure.²

The court hierarchy in the Czech Republic comprises district courts, regional courts, and superior courts. With a few exceptions, matters of first instance are heard before one of the 86 district courts, and appeals are heard in eight regional courts and two superior courts. The Supreme Court is the highest court in all matters except constitutional and administrative matters, which are heard by the Constitutional Court and the Supreme Administrative Court. All three courts of last instance are seated in Brno.³

A. The Legal Profession

Since the fall of Communism, the number of Czech attorneys has quickly multiplied. In 1989 there were only 600 attorneys, but there are now over 10,000.⁴ The Czech legal profession is regulated by the Law on the Legal Profession, passed in 1996.⁵ It established the Czech Bar Association (also known as the Czech Chamber of Advocates), the only bar association in the country. Membership is mandatory for all practicing attorneys, and requires a law degree from a Czech law school, three years of apprenticeship, and a passing score on the advocates exam.⁶ Foreign lawyers may become members by passing a recognition exam, but are still limited to providing legal services related to international law and the jurisdictions in which they are qualified. However, European lawyers may practice other types of law, either as guest or settled

¹ Ústavní zákon České republiky (Constitution of the Czech Republic).

² See, e.g., Martindale-Hubbell Law Digest, Czech Republic Law Digest 1 (LexisNexis Martindale-Hubbell 2007).

³ *Id.* at 7. See also Michal Bobeck, An Introduction to the Czech Legal System, *available at*: http://www.nyulawglobal.org/globalex/czech_republic.htm.

⁴ See, e.g., Conference of the International Bar Association, *available at*: <http://prague.ibanet.org/introduction.html#vladimir>.

⁵ Zákon č. 85/1996 Sb. (Law No. 85/1996 Coll., Law on the Legal Profession) (also known as the Advocacy Act).

⁶ Czech Republic Law Digest 15-16. There is an exception for in-house attorneys, who do not need to maintain bar membership.

European attorneys. Guest attorneys need not register with the Bar, but may provide legal services only temporarily.⁷

B. Legal Aid

There are several Czech charters and codes that have bearing on the right to legal aid in the Czech Republic. These provisions can be found in codes governing everything from administrative procedure to the legal profession. It is not always clear how these provisions support, overlap, or override one another, and the need for a uniform law is apparent.⁸ Moreover, because the actual granting of legal aid is left to each court, and as the exact procedures for granting legal aid have not been specified, the decisions are highly subject to the discretion of each individual judge and court.⁹ Further, the existing provisions guarantee the right to legal aid only in court proceedings, making it difficult for clients who cannot afford a lawyer to obtain legal advice in anticipation of, or outside of, litigation.¹⁰

Attempts to adopt a comprehensive legal aid law have not yet been successful. On May 15, 2003, the Czech Legislative Council approved the Draft Law on Free Legal Aid.¹¹ The Draft Law signified an attempt to develop comprehensive legal aid legislation and uniform procedures for providing legal aid in judicial proceedings. For example, it set forth a standardized means test to be used by courts in determining the financial status of a party requesting legal aid. However, the only section of the Draft Law submitted to and finally approved by Parliament was the narrow section pertaining to cross-border disputes.¹² As adopted, the Law provides for legal aid only in the limited instance where a citizen of another EU member state is caught in a cross-border dispute before a Czech court, or where a Czech citizen is before the court of another EU member state.¹³ There are no current plans to revive the Draft Law or to institute similar legislation.¹⁴

Of the existing provisions relating to legal aid, the most basic one is the broad right to legal aid, found in the Charter on Fundamental Rights and Freedoms, which has constitutional force.¹⁵ The Charter also guarantees the right to free court-appointed counsel in criminal

⁷ *Id.*

⁸ See Barbora Bukovská, Summary of Significant Legal Aid Developments in the Czech Republic in 2002-2005 1-3, *available at*: http://www.justicieinitiative.org/db/resource2?res_id=103496.

⁹ See, e.g., Pavel Šturma, Report on the Situation of Fundamental Rights in the Czech Republic, EU Network of Independent Experts on Fundamental Rights 90, *available at*: <http://cridho.cpd.r.ucl.ac.be/documents/Download.Rep/Reports2004/nacionales/CFR-CDF.repCZECHREP.2004.pdf>; Bukovská Summary at 2.

¹⁰ See Veronika Kristková and the Public Interest Law Institute (PILI), The Tradition and Current Opportunities for Pro Bono Legal Services in the Czech Republic 10 (unpublished paper on *pro bono* opportunities in the Czech Republic).

¹¹ Draft Law on Providing Legal Aid in Proceedings before Courts and Other Authorities in Cross-Border Disputes within the European Union, on Reimbursement of Expenses of Legal Aid by the State, and on the Modification of Certain Laws (2003); see also Bukovská Summary at 3.

¹² The Law was approved on November 11, 2004, as zákon č. 629/2004 Sb. (Law No. 629/2004 Coll., Law on the Provision of Legal Aid in Cross-Border Disputes within the European Union).

¹³ See, e.g., zákon č. 629/2004 Sb.; Šturma at 90.

¹⁴ See Interview with Veronika Kristková, lawyer for the League of Human Rights (January 23, 2008).

¹⁵ Charter on Fundamental Rights and Freedoms art. 37(2), *available at*: http://test.concourt.cz/angl_verze/rights.html (“In proceedings before courts, other state bodies, or public

proceedings.¹⁶ Similarly, the Code of Civil Procedure states that an individual may apply to the court for counsel, and the court may grant the request if “necessary for protection of [his] interests.”¹⁷

The Law on the Legal Profession further stipulates that a disadvantaged party may apply “to have his lawyer appointed by the Bar.”¹⁸ The Czech Bar Association, if it feels the case is warranted, may appoint an attorney to work for free or at a reduced rate. However, because neither the client nor the state pays for the legal aid, the Bar Association faces funding problems.¹⁹ Following amendments to the law in 2006, an individual has the right to obtain an attorney through the Bar Association only after the court has rejected an individual’s request for legal aid.²⁰ The individual must also provide proof that at least two lawyers have also refused to provide legal services.²¹ Furthermore, an appointed attorney may inquire into the financial status of the applicant and the merits of the case, and may, upon notifying the Bar and the applicant, refuse to represent the individual if the aid sought is “obviously unreasonable.”²² Public awareness of the opportunity to apply to the Bar for legal aid is low, and the Bar Association does not advertise it widely.²³

Other legal aid provisions may also be found in the Criminal Procedure Code,²⁴ the Administrative Procedure Code,²⁵ and the Law on the Constitutional Court.²⁶ Of particular interest are the recent amendments to the Criminal Procedure Code, which provide examples of one area (criminal representations) where legal aid practices have been elaborated upon and improved. Prior to 2004, the sole legal aid provision of the Criminal Procedure Code simply permitted courts to determine that a defendant had a right to free legal aid if the defendant could

administrative authorities, everyone shall have the right to assistance of counsel from the very beginning of such proceedings.”).

¹⁶ Charter on Fundamental Rights and Freedoms art. 40(3).

¹⁷ Zákon č. 99/1963 Sb. (Law No. 99/1963 Coll., Civil Procedure Code) §§30, 138, *available at*: <http://mujweb.cz/www/vaske/osr.htm>. The Code allows courts to appoint free legal counsel for defendants and victims of crime who can “prove [that] they do not have sufficient means to cover the expenses of their defense.” However, no counsel may be appointed if “the matter is an obviously unsuccessful exercise of, or defense of, a right.”

¹⁸ Zákon č. 85/1996 Sb. §18(2).

¹⁹ *See Šturma* at 89.

²⁰ *Id.*

²¹ *See Bukovská Summary* at 6-7; *see also* European Commission, Legal Aid – Czech Republic, at question 3, *available at*: http://ec.europa.eu/civiljustice/legal_aid/legal_aid_cze_en.htm. This can prove to be a difficult requirement to meet, as lawyers frequently fail to provide documentation that they refused to represent the potential client in question. *See Kristková and PILI* at 13.

²² Zákon č. 85/1996 Sb. §§18(2), 19. The amendments also dictate that only one attorney may be assigned to each case; *see also Bukovská Summary* at 2, 6-7.

²³ *See Kristková and PILI* at 16. The Czech Bar Association also sponsors free legal counseling hours at the seat of each regional court. This is a purely voluntary service that is not widely publicized. *See id.*

²⁴ Zákon č. 141/1961 Sb. (Law No. 141/1961 Coll., Criminal Procedure Code).

²⁵ Zákon č. 150/2002 Sb. (Law No. 150/2002 Coll., Administrative Procedure Code). Attorneys may be appointed for plaintiffs who lack sufficient financial means. However, the plaintiff’s claim must not be “manifestly frivolous.”

²⁶ Zákon č. 182/1993 Sb. §83 (Law No. 182/1993 Coll., Law on the Constitutional Court). The Constitutional Court may grant legal aid if justified by the applicant’s interests, particularly if she lacks the means to obtain counsel.

prove a lack of financial means.²⁷ The Code did not specify any process for the appointment of lawyers — even in mandatory (or “obligatory”) defense cases, where the defendant is required under Czech law to be represented by an attorney. The Code also did not specify the extent of legal aid available for indigent defendants in nonmandatory defense cases.²⁸

A 2004 amendment to the Criminal Procedure Code established a mechanism for selecting attorneys to be appointed by courts in mandatory defense cases. Attorneys who volunteer to provide free legal defense and who reside in the jurisdiction are kept on an alphabetical waiting list and appointed by courts as the need arises. Courts also keep a second list of all attorneys in the district, in case no volunteer attorney from the first list is available.²⁹ Similarly, procedures regarding legal aid in nonmandatory defense cases have become more precise. Another 2004 amendment addressed the problem of defendants who have requested, and are granted, free legal aid, but have difficulty finding a lawyer.³⁰ The amendment allows the court, upon granting legal aid, to immediately appoint an attorney for the defendant at her request.³¹

Despite these procedural improvements, only a small number of those defendants entitled to free legal aid actually request it. There appears to be significant room for improving defendants’ awareness of the right to request free legal aid.³²

II. *Pro Bono Opportunities in the Czech Republic*

A. Existing Opportunities

The Ministry of Justice and the Czech Bar Association have not kept track of decisions to grant legal aid in the past, and, as a result, there are currently no records of how often legal aid provisions have been utilized, and how often lawyers represent *pro bono* clients in the courts.³³ Regardless, it is evident that the Czech Republic lacks an entrenched *pro bono* culture. While attorneys may undertake an occasional *pro bono* case, such activities are not widely systematized.³⁴

Nevertheless, several Czech NGOs that provide free legal services have become established over the last fifteen years. Most of these NGOs limit their legal assistance to counseling, without providing actual legal representation.³⁵ The exceptions are asylum and

²⁷ *Zákon č. 150/2002 Sb. §33; see also Bukovská Summary at 5.*

²⁸ *See Bukovská Summary at 4-5.* Mandatory defense cases include cases where the sentence allows for imprisonment of more than five years; proceedings involving a juvenile or fugitive; and cases where the accused is in custody or serving a prison sentence. *See also* Karabec, Diblicová, and Zeman, National Criminal Justice Profiles: Czech Republic, 43-44 (2002), *available at*: www.heuni.fi/12543.htm.

²⁹ *Zákon č. 283/2004 Sb. (Law No. 283/2004 Coll., Amendment of the Criminal Procedure Code).*

³⁰ Prior to 2004, the request for legal aid was considered a request for a waiver of legal fees. After the court granted a defendant’s request for legal aid (*i.e.*, ordered the state to pay for the representation), it was still up to the defendant to find an attorney.

³¹ *Zákon č. 539/2004 Sb. (Law No. 539/2004 Coll., Amendment of the Criminal Procedure Code).*

³² *Bukovská Summary at 6.*

³³ *See Barbora Bukovská, Access to Justice Country Report: Czech Republic 2, available at*: http://www.pili.org/en/dmdocuments/CR_CzechRepublic.pdf.

³⁴ *See Kristková and PILI.*

³⁵ *Bukovská Summary at 7.*

immigration cases, which NGO lawyers have brought into administrative courts. The relatively new Asylum Act provides that “[a] participant in the proceedings shall be entitled to request the assistance of a legal entity or private individual who provides legal assistance to refugees.”³⁶ The funding for such legal aid may be provided by the Ministry of Interior.³⁷ Prominent NGOs include the Organization for Aid to Refugees, the Counselling Center for Refugees, and the Society of Citizens Assisting Migrants.³⁸ The Organization for Aid to Refugees runs legal clinics for asylum seekers, including one affiliated with the Charles University law school.³⁹ It has also partnered with large international law firms on various *pro bono* projects.⁴⁰

In addition to registering with courts and the bar association, or working with NGOs providing legal services, attorneys interested in exploring *pro bono* opportunities may also consider legal reform and public interest organizations. For example, the Counselling Center of Citizenship, Civil and Human Rights works to raise public legal awareness in general, while the Open Society Fund focuses on judicial reform and access to justice.⁴¹ The Counselling Center has commissioned an ongoing study documenting the limitations of Czech civil and criminal legal aid. It also worked with other NGOs to comment on the 2004 Draft Law on Free Legal Aid and to work on preparing its own version of a legal aid law.⁴² Organizations like League of Human Rights focus on aspects of citizens’ rights, such as health care, education, and international human rights.⁴³ In the past many of these NGOs have also worked heavily on issues of discrimination, particularly against Czech Roma.⁴⁴ Finally, international law firms interested in engaging in *pro bono* work in the Czech Republic should contact the Public Interest Lawyers Association (PILA), which assists law firms in establishing *pro bono* programs.⁴⁵

B. Barriers to Pro Bono Work

The Act on the Legal Profession distinguishes between “Czech attorneys,” “Visiting European attorneys,” “settled European attorneys,” and “foreign attorneys.”⁴⁶ While lawyers in the first three categories will not encounter barriers to *pro bono* practice, as previously discussed, it may be more difficult for foreign attorneys to provide a range of legal services. However, “legal services” are defined under the Law on the Legal Profession as representation in courts, legal counseling, and legal drafting, regularly and for remuneration. Thus, it should be possible

³⁶ *Zákon č. 325/1999 Sb. §21(1)* (Law No. 325/1999 Coll., Asylum Act).

³⁷ *Id.*

³⁸ See Organization for Aid to Refugees, <http://www.opu.cz/index.php?lang=en>; Counselling Center for Refugees, <http://www.uprchlici.cz/en/index.html>; Society of Citizens Assisting Migrants, <http://soze.hyperlink.cz/EngWeb/index.htm>.

³⁹ See Organization for Aid to Refugees; Refugee Law Clinic Resources: Prague, http://www.larc.info/clinics/Prague_organization_for_aid_to.

⁴⁰ *Id.*

⁴¹ See Counselling Center of Citizenship, Civil and Human Rights, <http://www.poradna-prava.cz/english/index.htm>; Open Fund Society, <http://osf.cz/en/programove-oblasti/budovani-pravniho-statutu/access-to-justice>.

⁴² See *Bukovská* Summary at 7, n. 40; Counselling Center.

⁴³ See League of Human Rights, <http://www.llp.cz/en>; see also, e.g., Czech Helsinki Committee, <http://www.helcom.cz/en/>. The League of Human Rights has partnered with international law firms before. Interview with Kristková.

⁴⁴ See, e.g., League of Human Rights; Multicultural Center Prague, <http://www.mkc.cz/en/home.html>.

⁴⁵ See Public Interest Lawyers Association, <http://www.pilaw.cz>.

⁴⁶ *Zákon č. 85/1996 Sb.*

for foreign lawyers to participate in *pro bono* work without meeting the above requirements, as they will not be participating in the work for remuneration.⁴⁷ While foreign lawyers will not be permitted to appear in court, they can still be involved in support work for NGOs in areas such as legal research and drafting, as well as providing assistance in understanding foreign legal systems for use before the European Court of Human Rights and international tribunals.

III. Conclusion

While further legal aid reform is needed, and awareness must be raised regarding the existence of free legal aid, the past several years have witnessed moderate improvements to the legal aid system. More improvements may come as the Czech legal system adjusts to its new international standards. To date, *pro bono* work has not figured prominently in the legal profession. However, proactive Czech and European lawyers seeking *pro bono* representation opportunities can register with the courts and bar association. Non-European foreign lawyers may have a more difficult time, but may consider assisting various local NGOs. There have been some instances of international law firms successfully partnering with NGOs in the past, which bodes well for future *pro bono* opportunities.

Organizations Providing Pro Bono Services In The Czech Republic

Asociace občanských poraden, www.obcanskeporadny.cz (in Czech only)

Provides legal aid in the form of consultations only; does not provide legal representation in court.

Bílý kruh bezpečí, <http://www.bkb.cz/index.php>

Provides legal counseling to victims of crime; does not provide legal representation.

Český helsinský výbor, <http://www.helcom.cz/> (Czech Helsinki Committee)

Provides legal counseling and legal representation.

Iuridicum Remedium, www.iure.org

Provides legal services, including legal representation, to the socially disadvantaged.

Liga lidských práv, www.llp.cz

Provides legal services, including representation, in cases involving patient rights, rights of people with mental disabilities, coercive sterilizations, segregation in education and placement of children in institutions, and police violence.

Ekologický právní servis, www.eps.cz

Provides legal aid in environmental cases, employment discrimination, and consumer protection

IQ Roma Servis, <http://iqrs.cz/>

Provides legal aid to socially disadvantaged, mainly Roma clients.

Organizace pro pomoc uprchlíkům, www.opu.cz

Provides legal services to refugees – asylum applicants.

Public Interest Lawyers Association (PILA), www.pilaw.cz

Assists international law firms in implementing *pro bono* programs in the Czech Republic.

Poradna pro uprchlíky, www.uprchlici.cz

Provides legal services to refugees – asylum applicants.

Poradna pro občanství, občanská a lidská práva, www.poradna-prava.cz

Provides legal services to the victims of discrimination.

⁴⁷ See *id.*

Legal Clinics in the Czech Republic

Elsa First Legal Aid - Faculty of Law, Charles University, Prague

Run by a students' organization; faculty supervises the legal counseling provided by students in all major legal areas.

Refugee Legal Clinic - Faculty of Law, Charles University Prague (in cooperation with Organization for Aid to Refugees and Linklaters Alliance)

The clinic's aim is to provide both theoretical and practical training to students interested in the field of refugee law.

Legal clinic - Faculty of Law, Palackeho University in Olomouc

Law students provide free legal aid to disadvantaged clients, under supervision of the faculty .

Environmental Clinic - Faculty of Law, Masaryk University Brno

Refugee Clinic - Faculty of Law, Masaryk University Brno