

Legal Clinic as an Alternative Instrument

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15-17 September 2016

1. Social injustice

- Accession to justice and legal protection in a transition society in which differences in incomes are growing becomes hard --- **a new form of social exclusion**
- The state-financed **legal assistance** cannot cover all persons in economic, social, cultural, healthcare or housing need (35-40% of the population) – only
 - in serious offence
 - in asylum and expulsion procedure
 - for victims of violence/felony
 - for civil and administrative procedure of persons in extreme poverty
- **Supplemental instruments** developed by the
 - ombudsman,
 - trade unions,
 - NGOs,
 - universities and
 - pro bono professional work of legal representatives

Dualism in free legal aid

- there is a **state authority that decides on eligibility of applicants** for free/supported legal counseling, and
- the requested legal service is **provided by the selected non-state, private practitioners** (attorney-at-law, legal teachers and professionals of NGOs) whose names are putting to the list of service suppliers.

The applicant or the proceeding authority may select (designate) a name from the list. The tariff of designated legal representative/consultant is fixed in a ministerial decree (for instance, in 2015 it means 5000 HUF – about 16 EUR - per hour).

Moreover, the Hungarian Bar of Associations has to up-to-date the list of attorneys-at-law for designation that shall be put on its homepage (Act XI of 1998, Art 31-35).

- For this **disproportional honorarium** of law practitioners in comparison to being on their permanent standby and the existing specialization of lawyers puts together
- the **limited efficiency of designated legal representation.**

Exclusion

- For instance, 70 percent of charged and investigated persons have never represented by attorney-at-law so **their right to defense in criminal procedures is ensured not at all**. The half of 30 percent means designated legal representatives but their enthusiasm and activity is minimal or rather formal during the proceedings.
- According to the empirical surveys 65-70 percent of charged persons are **unsatisfied the function of their designated, state financed legal representatives**. The reasons of disturbance in operation and low efficiency of free legal aid may be defined in five main points, taking into account the critics made by the Ombudsman and NGOs

2. Legal education

- Despite of economic and political changes, EU membership, Bologna system... since 1960s
- intentionally uniform
- undivided including
 - 5 years of legal theory (BA+MA)
 - 3 years of practice at least and
 - Attorney-at-law exams are taken
- not specialized covering more and more historical, theoretical, comparative, substantial and procedure rules (from national, international and EU law) – only the LLM may provide it
- based on frontal classroom teaching

legal education has not been reformed in merit in Hungary – traditions of formalism, textualised interpretation

Rate of legal students in tertiary education in Hungary

Academic year	All students in tertiary education (100%)	Law students from them	% of the total	All students at regular courses (100%)	Law students from them	% of the total	Teachers in tertiary education
1910/1911						45.0	
1990/1991	102,387	4,738	4.6	76,601	3,128	4.1	17,302
2001/2002	313,238	17,612	5.6	184,071	9,158	4.9	22,863
2002/2003	341,187	17,935	5.3	193,155	9,423	4.9	23,151
2003/2004	366,947	18,096	4.9	204,910	9,643	4.7	23,288
2004/2005	421,520	18,564	4.4	225,512	9,983	4.4	23,787
2011/2012	359,824	15,103	4.2	241,614	8,227	3.4	21,357

Legal education

- The ministerial decree defines the output of legal education – requirements from the view points and needs of the public administration, courts, public prosecutors
- The freelance jobs (attorney-at law, law firms, managers, trainers...) and their associations are weak in lobbying for the needs of market and consumers to the everyday conflicts – e.g. Bar of Association has no accreditation standard for law schools for students participation in pro bono activities
- There are state and municipally financed scholarships, student loans and established universities – so the alternative, interdisciplinary education forms (LC, mediation, law and language, law and literature/arts, case studies) are exotic exceptions from the traditional teaching

3. Legal clinics in Hungary

Seeking the own model for legal clinics, the legal education that is operated at 9 faculties can be divided into three parts:

- LC does not exist;
- LC exists as additional, timely form of legal education including street-law activities, occasional legal assistance for local people;
- LC exists as an integrative part of curricula.

4. LC at University of Szeged

Mission of the LC:

- making experimental courses to students that are interested in this elective (non-mandatory) part of curricula that is based on abstract, theoretical knowledge of norms,
- preparation for the legal profession providing for students with a live client experience,
- development of ethical issues through practical cases, such as competition or clash of interests, respect of otherness, anti-corruption, fair communication also with underclass people, trust on client, fact-funding from many sources, punctuality, and
- giving legal services for disadvantaged groups as a chance for accession to justice.

LC at University of Szeged

The LC as optional (elective) course is divided into three substantial parts (LC I, II, III):

- preparatory (legal, institutional, communication, administrative, psychological training for students with guest speakers and tutors) course taking 4 days (40 hours);
- legal counseling for NGOs and segregated clients in their institutes, city hall, NGO offices at least 30 hours per semester - in situ by the students (student duty hours meeting with clients);
- report of the cases to the tutors and consultations with them at least in 16 hours per semester.

LC at University of Szeged

The main data on counseling and LC operation in 11 years are as follows:

- The total number of participating students: 160 (it is below our maximal capacity). Beyond these full-time students the non-regular (part-time) students (at evening courses), and ERASMUS law students attending the course on non-profit law in Hungary are received. Since 2011 the LC has been available for part-time students.
- The total number of assisted clients with free legal aid: 750, and together with their involved family members they meant at least 2250 people.
- The number of cases: 700 from them 15% belonged to the social and equal rights, 27% to family law and child protection, 4% to patient rights, 7% to non-profit organizations' rights, 16% to housing, 4% to handicapped persons' rights, 9% to labor law and 18% to public administrative law.

LC at University of Szeged

- This statistics outlines the main profile of LC:
 - anti-discrimination law,
 - non-profit organizations law,
 - housing, social allowances, social insurance,
 - labor law,
 - handicapped persons' rights,
 - family law, child protection.

It means that penal cases, migration, commercial or corporate law is out of LC's portfolio.

Majority of legal assistance is relating to explanation of the legal conditions, to public administration, municipal procedures, mediation in a conflict or preparatory of law-suit.

- Upon request LC assists to submit application for grants or to give presentation on legal changes (for instance, how handicapped persons can access to the tertiary education or how the testament would be defined) or training on recognition of violence inside the household/family. It is rather a street-law activity.

LC at University of Szeged

- Some examples from recent issues and cases: establishing social cooperative for marginalized, uneducated or not fully active people; how to modify the statute of NGO in accordance with the new Code Civil, tax and public revenues of public utility organizations; termination of NGO and how to protect the processed personal data of prior members and clients; complaint for exclusion of moped for handicapped person from the public transport; standardization of shops that are available for blind persons (a new brand 'Friendly shopping for blind persons'); extra rental charges in community flats for Roma; denied address card for Roma.

LC at University of Szeged

- LC I-II-III is attended during the 3rd - 9th semester for 6 credits
- under the supervision of 6-8 tutors (attorney-at-law and senior teachers), all of tutors are working in joint position or as part-time worker at university
- hosted by the Department of the Constitutional law
- with own equipped office for training and consultation with NGOs, tutors,
- the guidelines of operation, its place inside the curricula and number of credit (6) are approved by the Faculty Council (on the grounds of the Ministerial Decree No. 39 of 2012, November 21 determines that legal MA shall be based on 300 credits, so the 6 credits in LC are marginal)
- Despite of these efforts and result the enthusiasm of legal teachers and awareness on clinical education is limited.
- The recent grant from the Ministry of Justice (2016-2017) would extend the internal knowledge of this alternative teaching method and to develop networks of LC with professionals, too. Furthermore, a new textbook and materials for LC students are under preparation.

LC at University of Szeged

How can we interpret the partnership?

- Our LC considers the contractual organisations as partners, and student participating in the LC program treats clients as partners in “learning by doing”.
- The LC of the Faculty of Law has numerous partners on the grounds of **biannual partnership agreements** with local NGOs representing Roma, handicapped, unemployed, sick, homeless persons and families, early children development centre, centre for volunteers, abandoned children in need, and recently the local/regional municipal social departments and National Centre of Patients, Children and Inmates that may forward marginalized clients to the LC. – they promote the LC services and manage the accession of potential clients during the official hours in the NGOs seat/office.
- independency in profile, refusal, responsibility and curricula of LC is guaranteed in a cooperative spirit, for instance LC accepts the legal claim of NGOs in statute modification or project planning while in examination and summer periods tutors have to manage the urgent claims from clients.
- There is no advertisement on LC but personal information from prior clients or chats also inspire local people to become potential clients. Time to time information on LC in local media (radio and press) provides certain publicity of the social undertaking of the university including the operation of LC.



4. Conclusions

- The LC belongs to the evolving, alternative toolkit of the legal education – without revolution in our region
- The LC shall be a sustainable inside the curricula (and credits) from own managed, financed resources – not a project, not a campaign
- The LC with own mission may become a solid component of the social inclusion as additional, supplemental instrument in a polarised society – partnership and cooperation with NGOs and communities representing the segregated clients are required
- The LC shall improve the professional thinking and ethics – by the guidelines of refused cases, tutors and regular evaluation of operation by the Faculty and NGOs