

TEN YEARS OF ACADEMIC CLINICS IN POLAND: ACHIEVEMENTS AND CHALLENGES

By Jacek Kowalewski¹

The 10-year experience of Polish in-house university legal clinics proves they are highly helpful in providing equal access to justice. Many organisational problems are still being faced, but the educational goal of the programs is closer and closer to attainment. Thus, in the future the role of Poland as the leader in clinical movement in Central-Eastern Europe may only be reinforced.

Development

The story goes back to the mid-90's. 'It coincided with a major teaching program overhaul at Polish law schools, which was prompted by the need to adapt curricula to the requirements of ECTS (European Credit Transfer System) (...). It was also a live issue at the time of a more general debate over the traditional teaching methodology at law faculties of state schools, in particular in view of the more "vocational" – and thus often more competitive – curricula of the newly inaugurated law faculties at private schools. It also became a part of a nationwide discussion over the need to grant graduates of law schools broader access to the legal profession, basing their future functioning in the society on the principle of competition, particularly at a time when professional corporations tend to limit access to apprenticeship. It is also related to the criticism of the limited accessibility to legal services in Poland, particularly by comparison, and the lack of a tradition of pro publico bono work among lawyers². And so, in 1996 the Cracow University, the Consulate General of the US in Cracow and the Organisation for Security and Cooperation in Europe (the OSCE) organized a seminar about legal clinics. The first bureau, formed by the law faculty of the Cracow University³ and operating since 1997, was soon joined by colleagues from Warsaw University⁴. The idea spread around the country so that today the majority of public law faculties operate clinics (25 bureaux in 15 cities)⁵. Among various institutions that supported the movement were the European Law Students Association ([ELSA](#)), the [American Bar Association](#), the [Polish-American Freedom Foundation](#), the Constitutional and Legal Policy Institute ([COLPI](#)) - reconstituted as the [Open Society Justice Initiative](#), the Public Interest Law Institute ([PILI](#)), and the [C.H. Beck](#) publishing house. The European Union is an increasingly important source of funding⁶.

Clinics work under various legal forms (university department, students' association or an NGO), with stronger or weaker support from their mother faculties. Sometimes the formal award they offer to the volunteers is a number of credit points that students gather to graduate, sometimes there is none. Only one clinic constitutes an obligatory component of its mother faculty curriculum, and paradoxically it is the infant bureau founded in 2006 by the Faculty of Law and Administration of

1 Law graduate from Warsaw University. The author wishes to thank the following persons for information and for remarks on the final draft they provided the author with: Filip Czernicki from the Legal Clinic Foundation, Warsaw; Marlena Pecyna, PhD, from the clinic by the Faculty of Law and Administration of the Jagiellonian University, Cracow; Anna Mordel from the clinic by the University of Opole; Maciej Krzyworączka from the clinic by the Faculty of Law and Administration of the Warsaw University; and Ewa Nowicka from the clinic by the University of Szczecin. Special thanks go to Robin Westbrook, IBA Pro Bono and Access to Justice Committee Officer, for her idea to write this article, for her comments on earlier drafts and for her help with final editing. All the responsibility for the paper is solely of the author.

2 Eleonora Zielińska, "Clinical education as a nucleus for the reform of legal education in Poland", in: "The Legal Clinics. The Idea, Organization, Methodology", Fundacja Uniwersyteckich Poradni Prawnych 2005, p. 14, http://www.fupp.org.pl/download/legal_clinic.pdf; all web links in this article last visited 8 February 2009.

3 <http://www.law.uj.edu.pl/poradnia>

4 <http://www2.wpia.uw.edu.pl/text.php?cat=582>, <http://www.klinika.wpia.uw.edu.pl/>

5 2007/2008 year report, http://www.fupp.org.pl/download/prezentacja_2007-2008.ppt, slide 2

6 For example "Education for Integration — Partnership for Refugees" project funded under EQUAL Community Initiative Programme. <http://www.juhrc.org/equal/en/>

the University of Opole.⁷ The clinics differ in the students' engagement in clinic management. According to one model there is a full-time administrative employee (the Warsaw Law Faculty Clinic), in another the burden is charged on students-assistants (the clinic in Szczecin⁸).

The clinics availed themselves of institutional cooperation with public social support centers, the Office of the United Nations High Commissioner for Refugees (the UNHCR), various NGOs, the Ombudsman and his citizens advice bureaux (see below), and others.

In the 2007/2008 academic year, around 10,500 cases were registered, handled by around 1,350 students and 200 supervisors (the latter category comprising university staff as well as cooperating external lawyers). In other words, on average, each student dealt with 8 cases, and each supervisor saw to the work of 6 students.⁹

The experience of the author draws from volunteering with the section for the accused and convicted in the clinic of the Faculty of Law and Administration of the Warsaw University. The clinic enrolls around 50 students each year and registers around 1000 cases. At the beginning of each year's clinic the students undergo intensive courses on communication with clients, on interviewing, etc. During the year they attend some special lectures, e.g. on ethical issues and on legal careers. In the aforementioned section, the work involved legal advising via correspondence and in a jail in Warsaw. The cases were of various degrees of difficulty and necessitated legal research in jurisprudence and law theory, as well as direct access to case files in various courts.

Particular areas of practice

Most of the clinics are divided into sections, usually: civil law, criminal law (separately victims and defendants), refugee law, labour law. Exceptionally the clinic in Szczecin is not divided by subject matter. This lets the students deal with a variety of cases and facilitates assigning equal workload to each student.

Of course each assignment should be a challenge for a clinic volunteer, and in this sense every case is "particular". Nevertheless, some activities deserve special attention as they are less common or give additional opportunities, and they differ in respect of educational goal of the clinics:

- [the children's law clinic](#) maintained by the Łódź University - the clinic is officially recognised by and cooperates with the [Commissioner for Children's Rights](#), an independent national body. Thanks to firm contacts with other institutions, the clients have, for example, easier access to medical examinations.
- [the medical law clinic](#) by the Jagiellonian University in Cracow – affiliated by the Collegium Medicum faculty (in which curriculum legal courses are included), but cooperating closely with the general clinic by the law faculty; it is supported by the healthcare administration (e.g. in the form of workshops) and local public bureau for patients' rights; advice covers issues of public insurance, damages for accidents during work, damages for harm caused by malpractice etc.; often are sought answers that are not strictly legal (e.g. availability of medicines or specialistic medical treatments), and in such cases provided also via phone or e-mail; advice may be given out of office, according to

7 <http://www.klinikaprawa.uni.opole.pl> The feature concerns only law students of regular program (not extramural). According to new rules, in the bureau around 100 students of the 4th year will be advising on a one-year basis (up till now, also 3rd and 5th years have been participating, but the former usually needs more theoretical knowledge, and the latter needs focus more on their final performing before graduation). The clinic provides remarkably high amount of preparatory courses – around 70 hours.

8 <http://mec.univ.szczecin.pl/~center/>

9 2007/2008 year report, http://www.fupp.org.pl/down/prezentacja_2007-2008.ppt , slide 5

- client-patient's special needs;
- guardians - they may act in court proceedings with various purposes, in particular to protect ownership of persons whose residence is unknown; accordingly, a guardian's task is to find the person and to inform her about the state of her rights - and simultaneously to protect her rights in the ongoing proceedings; clearly, the responsibility of the students is particularly high. In Cracow, the general clinic (not the one dealing with medical law) had sent a letter to the courts' presidents and then the latter encouraged the presidents of the courts' departments to charge the students with the role. Every year the clinic sends to the courts a list of students, and the appointments arrive at the clinic's address. The staff decides together with a student whether a case is appropriate, and if the latter is accepted, the clinic supervises the conduct of the volunteer. Formally, however, a guardian acts independently.
- advice in the disciplinary proceedings against students - advice is provided for example by criminal law section at the Jagiellonian University and not only to the students of this school; advisors (called "defenders") act as representatives in pre-trial phase and in the trial before disciplinary commissions; all tried students are informed about the possibility of clinical assistance on the basis of agreements with the universities; defenders work with case files, assist to interrogations, address the commissions with final speech etc.
- refugee clinic – offers particularly wide opportunities to develop legal representation skills. Maciej Krzyworączka from Warsaw University legal clinic refers to them in the following words: 'In our work, we do not hide behind an attorney, but simply take our client's case in our hands.' Students act formally independently. They avail themselves of the fact that even a layman may be a representative within the refugee procedure, which is an administrative one, i.e. before administrative bodies (unless an administrative court is to review an appeal). Clinical volunteers author written submissions but also accompany their clients in relevant public offices. They are exposed to cultural clashes and have opportunity to witness sometimes upsetting conditions in refugee centres.

Foundation

The [Legal Clinics Foundation](#) was created in 2002 and serves multiple purposes.

It regularly organises courses and conferences for clinics' assistants and patrons, including foreign ones. It publishes a national magazine *Klinika* [online issues in Polish] on organisational and substantive issues of clinical education. In addition to an internet newsgroup, an up-to-date website is maintained. From the latter you can download – in both Polish and in English – a [handbook](#) written on number of crucial issues by activists from the whole country.

The Foundation is one of the substantial donors – also as an intermediary for international resources. So far it has donated (in cash and in material support) over 105,000 euro.

The Foundation serves as common representative in respect of public administration, NGOs etc. It conducts promotion and lobbying, e.g. for a draft law on legal clinics.

While there is no public system of accreditation (as there are no special substantive or procedural rights in respect of clinics – see below), nor are legal clinics considered so seriously by Polish bars as for example by the American Bar Association¹⁰, the Foundation disseminates its clinical standards and uses them to evaluate the students offices' work. The result may be a criterion in grant

10 'The American Bar Association's Standards for Approval of Law [<http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%203.pdf>] underscore the significance of clinical programs by requiring that a school offer substantial opportunities for live-client or other real-life practice experiences, which can be accomplished through clinics or field placements'. Robin Westbrook, 'Meeting the needs of underserved communities: contributions of academic clinics', <http://www.internationalprobono.com/resources/attachment.131835>

procedures.

The Foundation prepares yearly reports on the clinical activity, each containing also observations about the state of law in general (e.g. in 2007/2008: lack of indispensable information about rights and duties provided by courts to parties acting without legal representatives; flaws in regulation of social support for immigrants; flaws in regulation of abortion; uncertainties concerning informed consent to perform a medical treatment).

More generally the Foundation is involved in generating pro bono attitude among lawyers. It launched a 'Lawyer Pro Bono' competition and the Pro Bono Centre, where the latter serves as a platform to coordinate pro bono advice from legal offices to NGOs. On the international level, it strives to build a strong clinical movement in Moldova, Ukraine, Uzbekistan, China, Russia and other countries.

Cooperation with the Ombudsman

The clinics availed themselves of co-operation with the Commissioner for Citizens' Rights, a public independent body commonly called the ombudsman, whose mission is to assist individuals in case their rights or freedoms are breached by public administration (or other individuals). The organ helps free of charge and has in his disposition soft measures as well as hard competences, e.g. to demand explanation, to appeal from administrative or judicial decisions. Naturally, he addresses primarily the problems of the less well-off, and access to justice is of his particular interest (including access to a competent and economically available lawyer).

As the ombudsman observed, '[f]rom [my] point of view (...), [f]irstly, [the clinics] play a significant educational role. They show young lawyers the extent of injustice, poverty and misfortune that surrounds them. (...) Secondly, legal clinics assist the Ombudsman in identifying threats to human rights as they emerge. (...) [Y]oung lawyers (...) create a network of information about the functioning of law in Poland.'¹¹ Accordingly, agreements between the body and individual clinics provide for exchange of information and mutual assistance. Particularly, the clinics refer to the ombudsman more complicated cases or issues that would need a more general approach. The ombudsman serves the clinics with legal materials for the advisors and clients. Some short basic brochures on selected legal problems, published by the ombudsman, were prepared in cooperation with clinics. Clinical volunteers have priority when applying for internships in the Ombudsman's Bureau.

Legal framework

The clinics are not in any way particularly recognised by law. As for legality of legal counselling, in principle restricted to professional lawyers, clinics avail themselves of a general provision that provides for practical methods of teaching law by universities¹². It is reflected in the wording of a standard form that every client has to sign before consulting a clinic: 'Preparation of opinions serves educational goals, I do understand that the opinion is prepared by the student and only at the risk of the person's applying for the opinion.'

11 Andrzej Zoll (the ombudsman at the time), "Introduction", in: "The Legal Clinics. The Idea, Organization, Methodology", Fundacja Uniwersyteckich Poradni Prawnych 2005, p. 13, http://www.fupp.org.pl/download/legal_clinic.pdf

12 Clinics fall into the category of "internships" that are precisely governed by universities themselves (the law on higher education delegates regulation of internships to the Ministry of Science and Higher Education, who merely stated that the internship should last at least three weeks; see the law of 27 July 2005 on higher education (the Official Journal number 164, position 1365, later amended), art. 9, and the regulation of 12 July 2005 (the Official Journal number 164, position 1166) and its 85th attachment on the standards of legal education, part IV).

Some basic guarantees regarding legal representatives do not apply to clinics, e.g. confidentiality. It probably raises doubts in minds of some students when they are confronted with the clinical code of conduct as one standard provision thereof states: 'Students and supervisors (...) shall protect the clients' best interest audaciously and honorably, and without consideration to any consequence to themselves or any other party.'

Clinics act before a court or another public body only exceptionally, e.g. in order to be granted access to files (however, compare refugee law clinics – see above). They act then in capacity of a "social organisation" or a "third person", in favour of whom all procedural laws provide for some rights of participation. It happens also 'that a student accompanies a client during the client's meeting, for example, at a local administration office, [but then] they do so to help the client understand their rights and obligations. This is not advice as such as it does not involve the student's solving any legal problem, the student is thus limited to explaining the matter or presenting problems that may ensue from application of law.'¹³

Access to court files is not in any way easier for clinics (unless they participate in given proceedings). 'In October 2003 the Ombudsman requested the Minister of Justice to grant wider access to criminal case court records to the representatives of legal clinics (...)'¹⁴. It was however of the author's personal experience to have the access once granted – and secured by a court by a 2-hour training on personal data protection – and once denied, in the same court, on the basis of law interpretation.

The future

In Poland the goal of social justice is still predominant, and '[u]ntil a coherent and comprehensive legal assistance system is constructed in Poland, and until the number of lawyers in legal corporations increases significantly, [this aspect] will continue to be of great importance.'¹⁵ That is why, despite quite decent national average number of cases per student, some volunteers in some clinics may be overloaded with work, and with repetitive work on similar cases (e.g. numerous prisoners' demands to help them with applications for commutation).

Moreover, clinical students and leaders thereof complain of insufficient office space for the secretariat work and meetings with clients, of too little technical support and too little legal materials (like software), which often originates from lack of effective support from mother faculties.

Last but not least, supervisors are there often merely to see to appropriateness of student advice. It is then reminded that '[s]uch a reduction of the teaching function is inadmissible. These supervisors should focus on the carrying out of a pre-established educational program which would incorporate the function of supervision over the students' activities as an element of importance, but only one of many elements.'¹⁶ The statement comes from 2005 and is representative for change of emphasis in developing new and already existing clinics – the change in favour of more training-oriented

13 Jerzy Ciapała, "The forms of legal assistance delivered by the clinic", in: "The Legal Clinics. The Idea, Organization, Methodology", Fundacja Uniwersyteckich Poradni Prawnych 2005, p. 128, http://www.fupp.org.pl/download/legal_clinic.pdf

14 Magdalena Olczyk, "The aims and principles of cooperation between the Ombudsman and the legal clinics", in: "The Legal Clinics. The Idea, Organization, Methodology", Fundacja Uniwersyteckich Poradni Prawnych 2005, p. 109, http://www.fupp.org.pl/download/legal_clinic.pdf

15 Łukasz Bojarski, "The social aspect of legal clinics, in: "The Legal Clinics. The Idea, Organization, Methodology", Fundacja Uniwersyteckich Poradni Prawnych 2005, p. 27, http://www.fupp.org.pl/download/legal_clinic.pdf

16 Fryderyk Zoll, Barbara Namysłowska-Gabrysiak, "The methodology of clinical teaching of law", in: "The Legal Clinics. The Idea, Organization, Methodology", Fundacja Uniwersyteckich Poradni Prawnych 2005, p. 187, http://www.fupp.org.pl/download/legal_clinic.pdf

clinics.

Simultaneously, new fields of action for clinics are being discovered. A recent discussion concerns micro-entrepreneurs, say: one running a small shop, or tobacconist. Nowadays, as commercial persons, they are not entitled to receive support from clinics even if in fact they often lack sufficient legal background.

In the opinion of Filip Czernicki from the The Legal Clinics Foundation, Polish clinics should seek the strongest possible economic support from their mother universities. This could facilitate another principal task: to offer more courses to teach students how to perform professionally for their clients' interests' sake. Accordingly, the (never-ending) mission of the Foundation is to find new sponsors, especially to win funding from the EU. At the same time, the organisation envisages production of workshops targeted solely to clinic supervisors, and publishing of specialistic publications.

Polish clinics still seek specific recognition in law. Their claims are expressed within two forums: on the reform of system of free legal aid, and on the reform of legal teaching in the European Union. 'It seems we have succeeded in convincing the Ministry of Justice to have clinics integrated in the new system of equal access to justice, and to have their costs refunded from public budget,' cautiously states Filip Czernicki. The new regulation might enter into life in 2010 but its draft hasn't yet entered the parliament-phase of legislative procedure. And then, there remains to be answered a question whether, once the dream is realized, the social justice mission will not permanently outweigh the educational goal.

In turn, the so-called Bologna process of the European Union is to, externally, enhance international competitiveness of the European universities, and internally, 'to create the European higher education area by making academic degree standards and quality assurance standards more comparable and compatible throughout Europe. [It involves for example] a common European system of credits and mobility of students and teachers. (...) One aim of the Bologna process is curricular reform: [to] provide students not just with technical knowledge of the law but also with competences and skills required for a successful legal career and active participation in economy and society'¹⁷, values that are to great extent transnational. That is exactly the contribution of clinical legal education, which enables them ever more to demand for recognition from universities, authorities or donors, and to persuade students to participate therein.

17 Andreas Bucker and William A. Woodruff, "The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences", German Law Journal, vol. 09 no. 05, p. 577, available from http://www.germanlawjournal.org/pdf/Vol09No05/PDF_Vol_09_No_05_575-618_Articles_Bucker%20and%20Woodruff.pdf (in English)