

# THE PECULIARITIES OF ACTIVITY OF LEGAL CLINICS IN THE STATES OF EUROPE

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**Abstract.** The purpose of the article is to demonstrate the development of the clinical legal movement in Europe and the peculiarities of activity of legal clinics in European countries. **Methodology.** The methodological basis of the article was a dialectical method of knowledge of social relation, phenomena and processes, which consists in revealing peculiarities of activity of legal clinics in the states of Europe. Also were used the method of system analysis, the historical method, the comparative-legal method. **Results.** The clinical legal movement in Europe has provided a good opportunity to improve human rights through training the students of law faculties to develop better skills for their future job as a lawyer. The clinical legal movement in Europe began in Central and Eastern Europe and only after some time has become widespread in Western Europe. Today legal clinics operate in almost every country in Europe. The introduction of clinical legal education as a way to bridge the gap between theory and practice has led to the recognition of legal clinics as the best forms of education that motivate students to develop a sense of professionalism, ethics, social responsibility, and to promote democracy and rule of law. The legal clinic in modern realities is the most effective instrument of acquiring practical skills for students who in the process of attraction to the work of the legal clinic can consolidate theoretical knowledge by providing legal assistance. The clinical experience offers an invaluable opportunity to use the received theoretical knowledge of jurisprudence in practice to expand the rights of those whose rights have been violated and who would have no other access to legal assistance. It is noted that special attention needs to be paid to the functioning of legal clinics in Poland and the standards of legal clinics in Poland. The adoption of standards for legal clinics in Europe remains an urgent problem, despite the growth of the number of legal clinics.

**Keywords:** clinical legal education, legal clinics, clinical legal movement, legal aid, lawyers, Europe.

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## INTRODUCTION

Article 7 of the United Nations Declaration of Human Rights provides that «all people are equal before the law and are entitled without any discrimination to equal protection of the law» [1]. One of the goals of the United Nations Sustainable Development Goals to 2030 is to promote just, peaceful and inclusive societies [2]. Consequently, the promotion of human and civil rights and freedoms, their comprehensive protection and protection are fundamental values of the legal, democratic, social state, a benchmark for the entire system of state bodies authorities and local self-government authorities.

Legal aid is an essential element of a fair, humane and efficient justice system that is based on the rule of law. Legal aid is the basis for the exercise of other rights, including the right to a fair trial, as defined in many international instruments [3].

The emergence of legal clinical education in the US as a new form of legal education and re-thinking of law has led to the introduction of such a form of education in several European countries. Today, clinical legal education in the EU is recognized as a powerful pedagogical model, an integral part of legal education, which involves students in the life of the community with the orientation of future lawyers to acquire skills of communication, communication with clients, teamwork, creative thinking. At the same time, clinical legal education is characterized by its diversity in goals and expectations. Legal clinics of different countries are closely combined with the peculiarities of each institution from the point of view of the experience of legal school and student profiles. In light of the rapid globalization of the legal profession and human rights problems, there is a need to communicate between legal clinics from differ-

ent jurisdictions to respond to these human rights problems.

### RESEARCH METHODOLOGY

Both scientific and special methods of scientific research were used to achieve the goals of the article. The methodological basis of the article was a dialectical method of knowledge of social relation, phenomena and processes, which consists in revealing peculiarities of activity of legal clinics in the states of Europe.

The method of system analysis was used in the analysis of definitions of legal clinical education and the legal clinic. The historical method was used for showing the legal clinical movement in Europe. The comparative-legal method showed the development of legal clinics in Europe and its peculiarities of activities.

### RESULTS

It is worth starting with the fact that the first mention of clinical legal education in law appeared in Germany in the middle of the XIX century, and in Copenhagen (Denmark) acted as a clinic. Only in 1893, the first so-called legal clinic was opened at the University of Pennsylvania. Since then, legal clinics have grown exponentially, not only in the United States but throughout the world [4].

The introduction of a system of clinical education at faculties of law in the countries of Europe for 90 years of the last century has given a qualitatively new impetus to the development of higher legal education in general. After all, in most universities, the legal tradition of legal education was based on the predominating academic style of teaching and formal criteria of obtaining legal knowledge and professional skills by lawyers.

Clinical legal education to a certain extent compensated for these shortcomings of the system of higher legal education, combining the experience of students in the classroom and with clients with real cases or projects, under the supervision of the teachers whose background includes extensive law practice.

The historical analysis of the legal clinical movement in Europe demonstrated that the introduction of clinical legal education was more rapid in Central and Eastern Europe than in Western Europe. This is due to the fact that for a long time the countries from Western Europe have had traditionally conservative approaches to legal education and within very traditional institutions did not perceive clinical legal education. However, over time, these views have changed, and today we can observe significant growth of legal clinics and changing the traditional theoretical approach to legal education in Western Europe [5]. Perhaps commencing in 2005 with the founding of the Penitentiary Clinic at Rovira i Virgili University's School of Law at Tarragona, Spain, clinical legal education has finally reached Western (continental) Europe [6].

The first clinic, which received real clients in Central Europe, appeared at Palacky University in Olomouc, Czech Republic, in 1995. However, in the following years owing to funding difficulties and the lack of teachers' participation, the activity of the clinic was halted. And only after the renewed funding from the European Social Fund and Ministry of Education of the Czech Republic the clinic at Palacky revived and grew to five: – Students' Legal Advising Office, Administrative Law Clinic, Refugee Law Clinic, Human Rights Clinic and Clinic of Electronic Communications Law [7]. The first clinic in Poland was created at the Faculty of Law at Jagiellonian University, with the support of the Ford Foundation and following a conference on clinical legal education supported by the U.S. Embassy and other donors, where in autumn 1997 began to work the clinic on human rights [8].

It needs to note that the clinical movement of Europe was spread through significant resources invested in the creation of legal clinics in the region such funds as the Ford Foundation, the Constitutional Law and Policy Institute, the American Bar Association Central European and Eurasian Law Initiative, USAID, the German Marshall Fund, the MacArthur Foundation. However, this movement was exclusively confined to Central and Eastern Europe [6].

The Bologna Process that has created the European Higher Education Area under the Lisbon Recognition Convention has played a principal role in creating space for innovation such as legal clinics [9]. The main feature of the Bologna Declaration was promoting focus not on the harmonization of higher education in Europe as such, but rather on the transparency necessary to increase the mobility of students and professors [10; 11]. The adoption of the Bologna reforms, which apply throughout Europe, has stimulated the spread of interactive teaching and clinical education to Western Europe. Western European universities have had to modify their legal education subject to the Cambridge programs to remain competitive internationally. This has created an incentive to implement more innovative courses and interactive teaching methods that are designed to engage students and prepare them for global law practice. The past decade has therefore seen a significant growth in the number of clinical programs at Western European law schools [12].

By creating legal clinics, educational institutions pursue two main goals: 1) legal empowerment of socially disadvantaged individuals and groups through providing free legal services; b) training law students in legal skills and preparing them to assume social responsibilities [13].

The legal clinic in modern realities is the most effective instrument of acquiring practical skills for students who in the process of attraction to the work of the legal clinic can consolidate theoretical knowledge by providing legal assistance.

Clinical legal education is a legal teaching method based on experiential learning, which fosters the

growth of knowledge, personal skills and values as well as promotes social justice at the same time. As a broad term, it encompasses varieties of formal, non-formal and informal educational programs and projects, which use practical-oriented, student-centred, problem based, interactive learning methods, including, but not limited to, the practical work of students on real cases and social issues supervised by academics and professionals. These educational activities aim to develop professional attitudes and foster the growth of the practical skills of students concerning the modern understanding of the role of the socially oriented professional in promoting the rule of law, providing access to justice and peaceful conflict resolutions, and solving social problems [14].

There are several benefits that students can get of the participating in the work a legal clinic: to acquire professional experience under a qualified guide; through the personal encounters with people and their related social problems to the clinic, to have cognizance of living law and its inconsistency with the academic law; to develop greater open-mindedness, train their meta-cognitive skills and intercultural communication, learning cooperative and multidisciplinary work, to strengthen ethical principles through a personal commitment to defending human rights, understanding how the law can serve social justice [15].

Working in a legal clinic is valuable for students, that helps future lawyers to form a high level of legal consciousness and legal culture, promotes professional skills development, and, making informed decisions according to the current legislation, to solve problems of clients. The legal clinic helps students develop such skills as the ability to critical thinking, communicability, ability to establish justice, high moral and free qualities. Practice in a legal clinic is an unprecedented experience, which allows students to develop their skills in conducting customer surveys, investigating facts of business, ability to carry out analysis of the regulatory and legal base, to draw up procedural documents and to conduct documentation, skills in communication with state bodies, and also in possession of legal ethics.

The most reliable and efficient legal clinics should combine the following 5 components, such as 1) providing legal advice or services to real clients is carried out by students-lawyers regardless of whether in court or not; 2) clients of the clinic are persons who do not have resources to attract a lawyer or this person from the vulnerable group of the population; 3) all work of students is thoroughly checked, regularly monitored by the member of the lawyer or the teacher of the school where the clinic is located and can be confirmed for it; 4) participation of students of the law faculty is provided by academic credit in the institution in which the student is studying, and an integrated part of the course of study in law school; 5) the student prepares to interact with clients by means of a preparatory or parallel course

of study, which focuses on the doctrine, skills, ethics and values of professional practice in the field of law [16; 17]. It is recognized around the world that the practical education is an efficient learning method in legal clinics, and using real cases improves the legal knowledge and skills of students. Legal clinics in the United States, for example, exist in almost all law faculties. As a rule, they have a certain specialization and are integrated into the educational process as a form of training and practice at the same time.

The introduction of clinical legal education as a way to bridge the gap between theory and practice has led to the recognition of legal clinics as the best forms of education that motivate students to develop a sense of professionalism, ethics, social responsibility, and to promote democracy and rule of law.

At present, clinical legal education is a rapidly growing form of legal education across much of Europe. It is widely accepted as a powerful pedagogical model which engages students and universities in the life of the community [18]. There are legal clinics in almost all European countries, but it is most common in Central and Eastern Europe. In most Western European countries, conversely, clinical legal education is a recent phenomenon that is still evolving. Legal clinics operate in Poland, Bulgaria, the Czech Republic, Croatia, Macedonia, Serbia, Montenegro, Slovakia, Ukraine, Belarus, Latvia, Lithuania etc. Supported by the Council of Europe in the framework of the Project "Reinforcing the capacity of the judiciary to apply European human rights standards at the national level in Bosnia and Herzegovina", the Human rights legal clinic was launched at the Faculty of Law of the University of Banja Luka, Bosnia and Herzegovina, on 18 February 2016 [19].

Legal clinics operate in the Netherlands and Belgium, Italy, Spain, France, but their number is insignificant. The University of Amsterdam, for example, has a legal clinic of international law, which allows the students of the magistracy to combine the theory of international law and practice during their studies at the university, in particular, in the areas of international public law, international trade and investment law, international and transnational criminal law [20]. Another example is a law clinic on human rights that was established in the University of Ghent in Belgium, whose activities are included in the educational process of the Faculty of Law and Criminology and which is intended to provide masters with intensive, practical intensive, hands-on, practical education in the form of clinical legal education in the field of human rights and migration law; and to fulfil a central social justice role by contributing to the effective protection of human rights, in particular those of disadvantaged persons and groups [21].

Germany who observed as a place that resisted the acceptance of clinical legal education for a very long time, now has more than 150 legal clinics operating as student-run NGOs or as clinics at law schools [22].

In Croatia, one of the legal clinics called "Osijek Pro Bono" has been registered with the Ministry of Justice as the primary legal aid provider since 2015. At present it is the general live client drop-in legal advice clinic that provides legal aid to poverty-stricken people in Osijek region, helps people confronted with debt collection proceedings, misdemeanour prosecutions, labour law, typical family law issues especially child support, spousal maintenance and a wide range of administrative cases and proceedings. Also, this legal clinic provides legal advice to all foreign students at the University of Osijek, primarily concerning the issues related to housing, medical care and residence permits but also covering other legal matters surrounding international students [23].

Today in Europe there are the legal clinics that engage the law of the EU, such as the EU Rights Clinic in Brussels [24], the European Human Rights and Migration Law Clinic in Turin [25], or the EU Regulatory Policy Clinic in Paris [26]. The EU Rights Clinic in Brussels, for example, seeks to contribute to improvements in European policy and legislation by engaging in strategic litigation and advocacy efforts targeting systematic breaches of EU free movement and migration rights by the national authorities of the EU Member States [24]. The EU Regulatory Policy Clinic in Paris provides its students with an uncommon perspective on EU lawyering. The core focus of the Clinic is on the different avenues enabling citizens not only to gain access to the EU decision-making process but also to 'lobby for good' through the analysis, critique and support of legislative and regulatory proposals. For instance, the Clinic has been involved in writing to EU officials, submitting a complaint to the EU Ombudsman, requesting access to documents from the institutions, proposing new initiatives through the launch of European Citizens' Initiatives, and more [26].

Special attention needs to be paid to the functioning of legal clinics in Poland. Starting with small scale Poland is unique to this region that went aggressively toward the introduction of a clinic on a national basis with most of the emphasis in clinical work focused on access to justice, the social mission of clinics and legal assistance services that the state does not provide. The clinical program in Poland is the best developed one in the region. A significant influence on the extension of clinics in Poland was the establishment in 2002 of a national establishment with the orientation exclusively on clinical legal education – the Polish Legal Clinics Foundation. The Legal Clinics Foundation holds the task of financing the activity of legal clinics in Poland but it also strengthens the future potential of the program. To achieve these goals several actions will be undertaken to standardize the activity of the clinics and to keep a sufficiently high level of clinical education [27]. Legal clinics are established in every public university in the country and almost all private universities. There are 25 legal clinics in Poland, and each year almost 2000 students, under the supervision of over 350 law professors is dealing

with around 12.000 cases [28].

In Poland, Polish Legal Clinics Foundation adopted the standards of legal clinics in 2014. The main aspects of such standards are defined: 1) legal clinic provides reliability of provided services, and every week seminars are held to discuss the cases currently being worked on by the clinic; 2) legal clinic assures the supervision of teachers for students, at the same time during one academic year the student takes at least 2 cases where he/she provides legal advice to clients and one person cannot directly supervise more than 16 students; 3) legal advice provided by the clinic is free of charge; 4) legal clinic assures the necessary confidentiality of its services; 5) legal clinic assures the protection of the documents submitted by the clients; legal clinic does not accept original versions of the documents; 6) legal clinic establishes secretary office according to the scope and characteristics of its activity; 7) before accepting the case, legal clinic informs the client in written about the rules of the clinical services, in particular stating that: student is a person taking the case, student and the legal clinic's worker cannot refuse to give evidence or answer a question of the court, prosecutor or any other authorized organ, legal clinic does not take cases in which an advocate or legal advisor already participates, the client has a right to turn any comments on the given legal advice to the Board of the Legal Clinics Foundation, legal advice is given in written only, legal clinic service is offered only for those whose financial situation does not allow to afford the payable legal advice; 9) legal clinic conducts qualification procedure for its clients, which is to make sure that the client to assure that the client cannot afford payable legal advice; in case of circumstances showing that the client can afford such service offered by an advocate or legal advisor, legal clinic immediately resigns the case; 10) legal clinic sets, according to the proper rules of law, information system about the clients which is to guarantee minimal risk of the conflict of interests; 11) legal clinic is obligated to conclude an insurance contract on the liability for damages, the guarantee amount cannot be lower than 10.000 euro [29].

One of the advantages of the Polish system of legal clinics is that it is the only country in the region of Central and Eastern Europe, which provides a significant part of the national legal aid services through clinics, although the students themselves never appear to court. However, legal aid is not the only mission of the clinic, as evidenced by the first clinics that provided legal services in human rights and other spheres. Legal aid schemes in Europe in general and in the Northern region, in particular, are mainly government programs with a budget to provide legal services to the poor in both criminal and civil cases, often without restrictions on income or assets. customers who will be serviced.

All European legal clinics are united in the European Network for Clinical Legal Education (ENCLE). The principal goals of the European Network for Clinical

Legal Education are: promoting, supporting and facilitating the creation of CLE programs across Europe, with a special emphasis on life client clinics; facilitating transnational information sharing and collaboration with regard to clinical legal education, by providing in particular tools for sharing information on teaching methods, effective practices and materials among teachers, such as websites and databases; fostering research on clinical legal education and creating platforms for the sharing and exchange of relevant research products; supporting and implementing advocacy projects at regional, national or European level in order to create greater awareness in Europe about the merits and advantages of clinical legal education; convening conferences, workshops and training sessions; providing a platform for, and facilitating, transnational projects on innovative methods of legal education and the sensitisation to social justice through legal education; training trainers in order to promote the creation of a pool of excellent clinical trainers in Europe; facilitating transnational study visits and exchange programs; promoting collaboration between clinical legal education programs and legal professionals [30].

Today one of the problems facing both legal clinics in Europe and the European network of clinical legal education is the development of standards for legal clinics in Europe. Setting standards for legal clinics can define minimum requirements for legal clinics in Europe and solve both educational and practical issues related to clinical work. In particular, the following issues should be included: the organizational and legal forms of law clinics, the issue of performing the lawyering roles by students and the level of supervision of their activities, the forms of legal assistance offered by the clinic and their legality with respect to the national laws, the educational role of the clinics, the issue of financing and integration of a law clinic into the law school study programme, etc.

The standards of legal clinics are being discussed in the EU today. In particular, during 2018-2021 several conferences were organized by the European Network of Clinical Legal Education, which discussed the creation of guiding principles of clinical legal education: ENCLE Round Table on European Standards for Clinical Legal Education [31], the project Skills transfers in Academia: A Renewed Strategy Enhancing legal clinics in the European Union (STARS) [32].

## CONCLUSION

The clinical legal movement in Europe has provided a good opportunity to improve human rights through training the students of law faculties to develop better skills for their future job as a lawyer. The clinical legal movement in Europe began in Central and Eastern Europe and only after some time has become widespread in Western Europe. Today legal clinics operate in almost every country in Europe.

The introduction of clinical legal education as a way to bridge the gap between theory and practice

has led to the recognition of legal clinics as the best forms of education that motivate students to develop a sense of professionalism, ethics, social responsibility, and to promote democracy and rule of law.

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It is noted that special attention needs to be paid to the functioning of legal clinics in Poland and to the standards of legal clinics in Poland.

The adoption of standards for legal clinics in Europe remains an urgent problem, despite the growth of the number of legal clinics.

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