European Transcultural
Law Clinics for
Migrants and
Refugees: Possibilities
and Perspectives
for Interpreters and
Translators

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#### **Povzetek**

Pravne klinike zagotavljajo pomoč marginaliziranim in socialno šibkejšim članom prebivalstva, ki nimajo možnosti za uporabo drugih oblik pravne pomoči in ne razpolagajo z informacijami, kako in kje pridobiti pravni nasvet. Ob tem se pojavlja vprašanje, ali tovrtstne klinike zagotavljajo ob pravni podpori tudi prevajalske in/ali tolmaške storitve, namenjene priseljencem, beguncem, prosilcem za azil ali kateri koli osebi, ki ne razume ali govori slovenskega jezika. Ranljive družbene skupine nikakor ne bi smele ostati brez brezplačne pravne pomoči in /ali tolmaško-prevajalskih storitev. V obstoječih slovenskih pravnih klinikah, ki nudijo *pro bono* tolmaške storitve, osebe nimajo ustrezne tolmaške izobrazbe. Članek se osredotoča na možnosti zagotavljanja strokovnih prevajalskih in/ali tolmaških storitev v obliki inovativnih transkulturnih pravnih klinik na univerzitetni ravni, upoštevajoč dejstvo, da je evropska večjezičnost edinstven vidik kulturne raznolikosti. Transkulturne pravne klinike bi pomenile novost v slovenskem visokošolskem izobraževalnem procesu, študentom bi jih lahko ponudili kot izbirni ali obvezni predmet.

Ključne besede: pravna klinika, tolmačenje, prevajanje, univerzitetni predmetnik, Slovenija

# 1 CLINICAL LEGAL EDUCATION AND TRANSLATING/INTERPRETING SERVICES

The European Network of Clinical Legal Education (ENCLE)<sup>1</sup> provides the following definition of clinical legal education<sup>2</sup>:

Clinical legal education is a legal teaching method based on experiential learning, which fosters the growth of knowledge, personal skills and values, while promoting social justice at the same time. As a broad term, it encompasses varieties of formal, non-formal and informal educational programs and projects that 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 and practical skills of students with regard to 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.<sup>3</sup>

According to Wilson, the key is not teaching, but learning; the teacher is not the "sage on the stage" but "the guide on the side". Learning occurs when the students are more active than passive, and teaching techniques can be arrayed along a spectrum from most passive (lecture and case method) to most active (the live client clinic) (2009: 829)

Law clinics in general provide aid to marginalised and underserved parts of the population who do not have the means to seek other forms of legal aid, and often lack the information to do so. According to Bartoli, the term "clinic" is in fact borrowed from medical training, in which learners, alongside their teachers, participate in the treatment of real patients. Clinical legal education was born in the early twentieth century in the United States during a serious rethink of teaching and curricula of the law schools (2016: 22). In fact, the practice of law clinics is still very efficient in the US where, according to Wilson, clinical legal education is now a mainstay of legal education, with well over 800 in-house clinical programs operating in US law schools and an average of six clinical subjects in each school. Around 600 clinical teachers attend the annual meeting of clinical teachers sponsored by the Association of American Law Schools (AALS), and hundreds more attend regional meetings sponsored by

<sup>1</sup> European Network for Clinical Legal Education (ENCLE) established in 2012/2013.

<sup>2</sup> Law clinics have their roots in the United States. Although there had been calls for clinical legal education to complement theoretical academic education as early as the 1920s, and "a few isolated experiments with law school clinics at Denver, Duke, and Southern California universities during the 1920s and 1930s" (Wizner 2002: 1933), the idea was initially slow to spread.

<sup>3</sup> ENCLE, Definition of a legal clinic, in http://encle.org/about-encle/definition-of-a-legal-clinic.

the same organization or by the Clinical Legal Education Association (CLEA) (2009: 827)

According to a report by the Center for the Study of Applied Legal Education's (CSALE) for 2016-17, (187 schools in the Master Survey reported) a total of 1,433 distinct law clinics were offered during the 2016/17 academic year (with clinics offering more than one semester counting as only one class credit). All but four schools offered at least one law clinic (Kuehn & Santacroce 2017: 8).

Since the early 1960s and 1970s the "idea" of the law clinic has spread to many other countries, such as Canada, Australia, and Great Britain, where unions of students, driven by a strong motivation to give concrete solutions in the name of social justice, started centres for free legal assistance. Today, there is a "global clinical movement" confirming the success of this legal education methodology. As Bartoli (2016: 22) finds, "the different definitions agree that the legal clinic programs have a dual nature (educational and pro-social) and dual benefits (to the students and clients)".

Law clinics first emerged in Central and Eastern Europe in the latter half of the 1990s in the wake of the massive changes after the fall of the Iron Curtain, when new societal, governmental and legal structures were forming. There was a need for a form of hands-on legal education that could support such changes, as well as a high demand for legal aid. Many of these local efforts received financial support from American organisations, such as the Open Society, leading to the creation of legal clinics in the Czech Republic, Hungary and Poland (Romano 2016: 30f.) as well as in Russia<sup>4</sup> and Ukraine (Rekosh 2005: 44). Poland, in particular, has developed a strong tradition of clinical legal education, with 26 law clinics in 15 cities (Hannemann & Dietlein 2016: 49).

It was only following the adoption of the Bologna Declaration (aimed at the creation of a common European area for higher education), the European integration process and the growing competition between public and private universities that clinical legal education began to take hold in Western Europe (Romano 2016: 34). In a survey of European law clinics, Romano (2016: 15) found that the vast majority of clinics in the EU are no more than 15 years old, and many are less than five. The survey encompasses over 100 clinics, but the author notes that it is not a complete census of all clinical legal programmes. Among the countries with the largest number of clinics are Italy, Poland, Germany and the UK. Most have a very low budget (50% have less than €10,000 a year), and are funded mainly by the university, but this differs even within countries, and Poland is the only country with a uniform system. Polish law clinics are centrally coordinated by a

<sup>4</sup> For more information on clinical legal education in Russia, see Oleg Anischik, "The State of Clinical Legal Education in Russia and the Foundation for Clinical Legal Education (CLEF)".

consortium and are a fully recognised part of the country's reform of legal education (Zielinska 2005: 14).

Currently, only two universities in Austria offer legal clinics: the University of Vienna and the University of Graz. The numbers are much higher in Germany, where, according to Kilian and Wenzel, sixty-four law clinics are currently operating (2017: 963). There are thirty-four legal clinics in Italy, while in Belgium only four law clinics are offered as a part of the higher education curriculum.

One of the main problems is that most law clinics in European countries operate with a very low budget: more than 60% of clinics draw their budget from university funds. Twenty-six per cent of clinic budgets are sponsored by foundations and private entities. Only 13% receive funding from local or national government agencies (Bartoli 2016: 49).

The scope is very different as well. In the US, law students may represent their clients in court with a supervising lawyer under the Student Practice Rules<sup>5</sup> (Hannemann & Dietlein 2016: 46f.), while in Germany, it only became possible to set up law clinics with the 2008 amendment to the Legal Services Act (Rechtsdienstleistungsgesetz), which regulates the provision of legal services by non-lawyers. Such services have to be provided free of cost (Hannemann & Dietlein 2016: 2) and supervised by a lawyer (ibid: 10). In Slovenia, students are not allowed to provide any legal services in court, even if supervised.

Law clinic services, practical legal education and legal aid, are generally provided *pro bono*, but while some law clinics are open to everyone, others may only accept clients who meet certain criteria, e. g. are indigent, poor, or belong to a certain population group.

According to Bloch (2008: 111), legal education is going global, and "what makes clinical legal education a global phenomenon is the worldwide importance of its ultimate goal: preparing future lawyers for high-quality, ethical law practice grounded in a legal profession dedicated to social justice".

Naturally, law clinics are neither the only kind of clinical legal education nor the only form of *pro bono* student activities. Other non-governmental organisations may provide legal aid similar to that provided in law clinics, but lack the aspect of legal training.

While in general the objectives and goals of law clinics are clear, the question that we, as translators and interpreters, cannot help asking is how do clinics guarantee not only legal aid but also translating/interpreting services when assisting

<sup>5</sup> For details, see http://www.law.georgetown.edu/ library/research/guides/studentpractice.cfm (last accessed 12 February 2018)

immigrants, refugees, asylum seekers or any other person who does not speak the language of the majority? These, often marginalised, groups should by no means be denied *pro bono* legal aid, but with such low-cost services how can we guarantee fluent and clear communication? Who usually provides these services? Is there any feedback on their quality? In which languages is the legal aid offered? The scientific literature does not offer any insight into these issues.

It is our strong opinion that in today's global world, offering professional translating/interpreting services on a regular, organised and supervised basis is crucial for any legal clinic. There is a great need for legal interpreters with knowledge of complex processes and the legal system, as well as the social skills needed to build trust and rapport, and the respective language combinations required to provide these services. Unfortunately, in Slovenian legal clinics, providing interpreting/translating services for migrants, refugees and any person who does not speak Slovenian is not to be taken for granted, as in most cases, people providing the *pro bono* interpreting services are bilingual students who lack either legal training, interpreter training, or both, which can have detrimental consequences.<sup>6</sup>

Thus, the implementation of a translation/interpreting (transcultural) legal clinic at the university level may significantly reduce costs, offer students of translating and interpreting some much needed practical experience, and build connections and mutual trust between students and legal professionals and legal interpreters. We define a *transcultural legal clinic* as a legal clinic that makes *pro bono* legal aid accessible to people of various cultural, ethnic and linguistic backgrounds, combining the elements of legal aid and practical legal and interpreting training.

# **2 LAW CLINICS IN SLOVENIA**

The terms "law clinic" or "legal clinic" do not exist in the Slovenian legislation. Therefore, there is no legal basis for the establishment and operation of a law clinic. Even the term "clinic" (imported from the US) should be used very carefully, as in the Slovenian legislation it is only applied to the field of healthcare. If a legal clinic is offered as an extra-curricular or inter-curricular activity for students under the supervision of a mentor, all services should be offered *pro bono* and students are not allowed to offer any legal aid or interpreting/translating service in court, even if supervised. This can only be done by lawyers and court interpreters.

<sup>6</sup> Despite EU Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and related directives, interpreting at police interviews and in court is often at the bare minimum level, and may not be available for conversations with the public defender.

As in many other European countries, the tradition of law clinics in Slovenia is relatively new. The Slovenian Bar Association might have opposed the provision of legal services by students because of strict rules of admission to the bar and ethical standards forbidding non-lawyers from practicing law, and, perhaps most basically, a clinic might be "taking bread from the table" from the perspective of the practicing bar.

The Legal Clinic for Migrants and Refugees (*Pravna klinika za begunce in tujce*) was only established in 2000, as an extra-curricular activity at the Faculty of Law, University of Ljubljana, in cooperation with PIC (Legal-Informational Centre for NGOs - *Pravno-informacijski center nevladnih organizacij*) as a mentor organisation to strengthen their knowledge and gain practical insights. Additionally, PIC is a partner / mentor organization for two other legal clinics, established at the Faculty of Law, University of Ljubljana, i.e. Legal Clinic for Environmental Protection (*Pravna klinika za varstvo okolja*), and Legal Counselling for Protection against Discrimination (*Pravna svetovalnica za varstvo pred diskriminacijo*).

The Legal Clinic for Migrants and Refugees empowers law students in the field of international protection procedures. Students participating in the legal clinic obtain in-depth knowledge of asylum legislation and asylum procedures in Slovenia, and offer legal assistance to refugees and foreigners. Each year, approximately 10-15 senior year students take part in the programme, benefiting from introductory seminars held by practitioners from the field and from the opportunity to get involved in the everyday work of one of the partner institutions of the Legal Clinic. All students who are completing at least their 3rd year in the Faculty of Law can apply. Knowledge of English, at least, and good communication skills, are required. The selection procedure usually involves both a written application and a personal interview. If more students apply than there are places available, a preliminary selection is made after the interview, taking the following criteria into account: motivation, average grade, foreign language skills, choice of the appropriate study course, possible previous experience and the candidate's suitability according to his/her personal interview.

There is also a law clinic called "Law in Sport" registered as an extra-curricular activity at the Faculty of Law, University of Ljubljana.

In addition, the subject "Law Clinic" was introduced as part of the curriculum (before the Bologna reform) at the Faculty of Law at the University of Maribor. Supervised students provided *pro bono* legal advice for the PIP Institute (*Pravo, Informacija, Pomoč*)<sup>7</sup>, which took full responsibility for the legal advice given. With the Bologna reform and the new accreditation of the study program, the subject "Legal Clinic" was replaced by "Legal Methods, Skills and Informatics".

<sup>7</sup> Law, Information, Help.

Law students conduct study-based credit-rated clinical work, which is carried out in cooperation with the Humanitarian Society's "The Law for All", organised as an online platform. Hence, the Faculty of Law also offers an opportunity for direct customer services.

When we approached the law clinics in Ljubljana and the Humanitarian Society in Maribor with questions on translating/interpreting services, their brief response was that translating/interpreting services are usually provided by bilingual students or members of the society who are not professional translators and interpreters. The issue of translating/interpreting is not seen to be crucial, as the emphasis is on providing legal aid. However, how can legal aid be properly provided to people who may not understand even English, not to mention Slovene? There is no need to elaborate on the importance of providing quick and professional translating, and especially interpreting services, in cases when legal aid is offered to a person who does not speak Slovene, and perhaps not even English.

This sensitive issue is, in fact, very important, considering the fact that Slovenia has traditionally been a transit country for migration. In 2016, migrants amounted to 6.6% of the Slovene population (based on valid residence permits: 24,687 citizens of European Union Member States and European Economic Area States, and 110,849 third-country nationals held a valid residence permit in Slovenia)8. Slovenia has mostly been a destination country for labour-led migration, followed by migration for the purpose of education and family reunification. Asylum-seekers and international protection beneficiaries traditionally represent a small share of immigration to Slovenia, but their number increased with the recent refugee crisis in 2015, which reached Slovenia in September 2015 as a consequence of Hungary closing its border with Serbia and Croatia. From October 2015 to January 2016, 422,000 refugees and migrants crossed Slovenia, since it was a transition country on their way towards other European countries to the west and north. After closure of the so-called Balkan route (with the conclusion of the EU – Turkey agreement), Slovenia's efforts shifted from providing humanitarian assistance during the transit emergency to refugee integration. The goal, in terms of the European solidarity scheme, is to relocate 567 asylum-seekers from Italy or Greece, and to resettle 20 persons from third countries (with a commitment to resettle an additional 40 Syrian citizens from Turkey).

One possible solution to the problem with interpreting/translating for legal aid could be implementing a translating/interpreting legal clinic as a compulsory/elective course at the Department for Translation Studies. Supervised students of translating or/and interpreting can provide *pro bono* services to refugees, asylum seekers and migrants. In this way, students will be offered valuable practical experience, while existing law clinics (and also various governmental and

<sup>8</sup> Source: Ministry of Interior.

non-governmental organizations) will be able to provide supervised interpreting/translating services.

#### 3 IMPLEMENTING A TRANSLATING/ INTERPRETING LEGAL CLINIC

We believe that a realistic and relatively short-term possibility for implementation of a translating/interpreting legal clinic occurs within the project "TransLaw. Exploring Legal Interpreting Service Paths and Transcultural Law Clinics for persons suspected or accused of a crime", which received funding from the European Union's DG JUSTICE programme, JUST-JACC-PROC-AG-2016.

This project "is an innovative and valuable response to the current refugee crisis, which, since 2015, has increased the demand for legal interpreting in Europe, especially in German-speaking countries and the Alps-Adria region.9 The main objective of the project is to discover and implement new pathways to secure the rights of persons suspected or accused of a crime quickly and in mutual cooperation with legal professionals in the form of Transcultural Law Clinics as intra- or extra-curricular activities at the university level. Universities have played a vital role in developing the field of training in legal interpreting, but joint intersectoral cooperation between legal professionals and legal interpreters as well as offering practical experience to students, is still rare.

Considering the fact that the European Union has twenty-four official languages and five hundred fifty-two language combinations, professional interpreting is much needed in all fields of legal services. European multilingualism is a unique aspect of the region's cultural diversity and the basis for freedom of speech and expression, access to information, and equality in criminal proceedings. According to the UN-Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 5/6), all persons have the right to a fair trial in a language they understand.

Europe is undergoing a steady progression in the diversity of its (criminal) population, and a steady progression of language-requirements in the respective trial phases. Unfortunately, the economic situation puts financial pressure on judicial services in charge of hiring interpreters, and an increasing number of persons suspected or accused of crimes undergo very complex processes in the pre-trial, trial, and post-trial phases, which require an interpreter. However, persons suspected

<sup>9</sup> The partners in the project are Universitat Wien, Universita Degli Studi di Trieste, Katholieke Universiteit Leuven and Univerza v Mariboru. Austria, Italy, Belgium and Slovenia have traditionally been either transit countries or final destinations for migration.

or accused of a crime are not usually assigned only one interpreter, but oftentimes many interpreters in the pre-trial, trial, and post-trial phases, which makes the process even more complex. An efficient solution for integrating qualified legal interpreters into these complex criminal proceedings is therefore crucial to ensuring judicial efficiency and strengthening the rights of EU citizens suspected or accused of a crime.

The project "TransLaw" will produce four innovative TransLaw Clinics in four European countries (Austria, Belgium, Italy and Slovenia) and will explore the functioning of this format in each country. Additionally, it is considered a new approach to train both interpreters and legal professionals in one joint programme, preparing them for their daily work together in service paths in criminal proceedings (process innovation).

The project's aim is for students to gain increased knowledge about the complex service paths of persons suspected or accused of a crime, as well as revealing the possibilities and constraints of qualified legal interpreters in this pathway. The project hopes to strengthen the efforts to help the refugee crisis in the Alps-Adria region by applying a coordinated and transferable approach and with a specific regional approach (geographical added value).

In the frame of the project "TransLaw", we will implement the translating/interpreting clinic at the Faculty of Arts, University of Maribor as an elective subject entitled "Multilingual and transcultural communication in criminal matters" in the second cycle (MA) programme of Translation and Interpreting at the Department of Translation Studies, in cooperation with the Faculty of Law. <sup>10</sup> The subject will comprise thirty hours and will be held in both English and German. Later an introduction of other languages, i.e. Russian, Macedonian, Croatian, Serbian, Albanian, Turkish or Farsi, may also be considered. At this stage, due to financial constraints, the course will only be offered in two languages. The outline syllabus covers the following topics:

- Introduction to international criminal procedural law and European criminal law.
- Communication in foreign languages and serving of documents in national criminal law.
- Human rights in an international environment.
- Translating and interpreting for non-Slovene speakers who are suspected
  or accused of a crime as a special means of offering free services of translating and interpreting, in cooperation with students from the Faculty
  of Law.

<sup>10</sup> The course will be offered to students in the 2019/2020 school year.

- Cultural values and social norms in the context of international criminal law.
- Analysis of the current state of interpreting and/or translating services with a special emphasis on translating and interpreting for non-Slovene speakers suspected or accused of a crime.
- Legal terminology in the field of criminal and international public law.
- Cultural, social and legal aspects of translating and/or interpreting for foreigners accused of committing a criminal offence
- Practice in a real environment, i.e. in governmental and non-governmental organizations and institutions.

The Faculty of Law undertook to provide a qualified person to cooperate with this project. The seminar will be followed by practical work, which will constitute approximately 2 to 4 hours per week according to a timetable agreed upon by the students and the mentor. The students will be offering *pro bono* interpreting and translation services to refugees, asylum seekers and migrants, primarily to persons accused of criminal offenses, on request. Students will be supervised by mentors from various non-governmental organisations (the Sloga platform), the Legal-Informational Centre for NGOs (*Pravno-informacijski center nevladnih organizacij – PIC*) as well as the Office of the Human Rights Ombudsman of Slovenia, the Slovenian Ministry of the Interior and the Administrative Court of Slovenia and (sworn) court interpreters.

There is another possibility for the implementation of the project's goals. At the University of Maribor, students in second cycle study programmes who, for the purpose of increasing the level of cooperation between the university and employers, get practical work experience at a company, are granted six ECTS points for one month of practical work experience. These points are then recorded in their diploma supplement as an additionally completed requirement that is not part of the study programme in which they are enrolled (in the section titled 'Additional Information'). Students can complete no more than four months of practical work experience and it must be carried out during their full-time studies. Only practical work experience that has been confirmed in advance and for which the content of the student's work in the company is defined will be recognised. Following the completion of the practical work experience, students should submit a summarised report (up to two pages) that clearly states what skills and knowledge, related to their field of study, they obtained during their practical work experience. Thus the theoretical contents of the new subject "Legal Interpreting and Translation Clinic"11 may be offered as an elective/compulsory

<sup>11</sup> Currently, there is no translating/interpreting (transcultural) legal clinic registered as an intra-curricular or extra-curricular activity at any university in Slovenia.

course, while practical work at the Legal and Translation/Interpretation Clinic or Consultancy for Foreign Citizens and Migrants (which includes *pro bono* work) may be offered to students as an extracurricular activity that will be evaluated with ECTS points. In cases when the project work amounts to a month, it can be treated as practical work experience.

As for clinical models, students may work in teams and deal with one case at a time. They may do a monitored intake interview with a start-up to assess its needs. Afterwards, they would draft letters of advice, including memos, terms and conditions, or privacy policies, which would be supervised by a professional translator or interpreter. Students may also provide telephone interpreting to clients on the basis of queries submitted to a translating/interpreting law clinic website.

"Simulated advice" may also be integrated into the course, being similar to the idea of a moot court when a fictitious problem exists for a fictitious client, with role-playing, and students interpreting in this situation.

We had certain concerns about evaluation, but while evaluation may be difficult, ongoing self-assessment (e.g. personal portfolios) by students may aid in the process. Clinics may also choose to adopt individual or team assessment. Outside external partners, such as law firms, can also assist with evaluation, depending on university rules.

### **4 CONCLUSION**

We firmly believe that the implementation of a new "Legal Interpreting and Translation Clinic" will increase knowledge about the employability of refugees, migrants, and students with prior legal or language skills, and thus strengthen the trust of the (refugee) population in the justice system.

Practice in real or realistic situations is generally regarded as important in interpreter training, and many universities require students to participate in an internship or other form of practical training. Interpreting at a law clinic offers an opportunity for public service or legal interpreting students to work in a setting where their interpretation matters, as opposed to interpreting in mock trials and roleplay exercises at university or simply observing real trials. Working on real cases, with real clients and law students, allows students to reflect on their role and the ethics and dynamics of such interpreter-mediated interactions, and to acquire a better understanding of law and legal terminology. Of course, this presents an opportunity for law students as well. They will learn how to work

with interpreters: addressing the client directly rather than asking the interpreter to ask the client something, waiting for the interpretation to be completed before responding, keeping utterances to a manageable length, providing the interpreter with the material they need to prepare, etc. They will also learn what they can and cannot expect from an interpreter, how important cultural background, dialect and nuanced communication can be, and learn to value the difficulty of the interpreter's task.

Transcultural law clinics address various problems by providing interpreting services by students under the supervision of an interpreting trainer or professional, thus allowing both law and interpreting students to help particularly vulnerable people, become sensitised to their needs, gain empathy and an understanding of the ethics and social responsibility involved in their respective professions.

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