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**«BRESCIA LEGAL CLINIC: TWO YEARS DOWN THE ROAD».**

## **§ 1 - Introduction**

This paper aims at providing a brief overview of the main features of the Brescia Legal Clinic (hereinafter: "the Clinic"), the first clinic ever introduced into the circle of the Italian legal studies.

The Clinic was established in 2009 thanks to the efforts made by a group of academics, lawyers and students, all persuaded that it was time to make a change in the traditional way of teaching and learning the law.

The Clinic pursues basically two aims:

- on one hand, complementing theoretical approach and traditional classes with a different way of learning the law based on a learning-by-doing methodology;
- on the other hand, showing the students that law shares not only a "technical" dimension but also a "social" one. Therefore the activity carried out within the Clinic should benefit individuals, associations, communities which need legal advice and defence of excellent quality in the following fields: protection of fundamental rights, housing, education, environment, immigration and so on. The activity performed in the clinic may be focused on both advice and litigation, depending on the case.

The Clinic is characterized by a multidisciplinary approach involving different legal fields: Civil Law, Criminal Law, Labour law, International and EU Law, Comparative Law, Family Law, Anti-discrimination Law.

## **§ 2 - Some preliminary problems**

The choice of starting a clinical programme was a challenging one. Since we were novice, it raised a good deal of problems, both theoretical and practical.

The first problem - however strange it may sound - was to understand what a legal clinic is really about. It is to bear in mind that clinical education - at least in Italy - is something unfamiliar and extraneous to the traditional way of teaching the law. "Traditional" academic classes are based on a model characterized by very little interaction between teachers and students: teachers talk to students and students just listen to them (when students are particularly active they ask questions, but they hardly discuss the legal issues at stake with the teachers). The main purpose of a traditional academic class, in Italy, is to transfer legal knowledge conceived as a set of notions organized by means of legal categories and principles. Therefore the main purpose of a traditional class, unlike it happens in any legal clinic, is not "problem-solving". It is no surprise, then, that we had to fit the clinical "scheme" into our academic system and tradition, adapting the model developed by the Anglo-Saxon countries to the Italian university.

Therefore we had to face some problems in terms of methodology. Italian legal courses are based on a theoretical approach. Therefore we had to answer these questions: Is there any space left for the traditional theoretical approach within a legal clinic course? Is there

an ideal balance between theoretical and practical activity? To what extent do we have to change our way of teaching and our attitude towards students?

Then we had to understand how a legal clinic could be organised. In particular, we had to answer a number of questions: How can a legal clinic course properly fit into a traditional curriculum? In terms of efficiency is there an ideal numerical ratio between teachers and students? What substantial features should a case have in order to be taken into consideration within a clinical program? What criteria should be adopted to choose the cases to be dealt with? How many students normally work on a single case? How many hours a week does each professor normally devote to meetings with the students involved in clinics? Does the activity performed by students within the clinic program have a predetermined duration?

In order to find the answers we were looking for, we organized an exchange programme involving US scholars from Yale Law School, NYU, CUNY and UNICONN Law School.

Another problem was the feeling of mistrust that some people (teachers, students, local Bar Association) had at the beginning of this new experience. A possible reason for such a feeling was the lack of knowledge of what a legal clinic is about. In particular: (1) some academics were (and some of them still are) somewhat sceptical about a teaching method which challenges the way they have been teaching law for many years. In fact, accepting the clinical approach means, to some extent, leaving aside well-established professional skills and acquiring new ones; (2) students have shown an ambiguous attitude towards

clinics: on one hand, legal clinics seem to meet our students' demand for more "practice" to be integrated into their course of study (and no doubt this is a very strong point); on the other hand, being the clinic based on a different way of learning, sometimes our students are afraid they will not be able to work it out in many respects (teamwork, flexible schedules, expected extra-work, lack of theoretical knowledge and so on); (3) the Local Bar Association's scepticism was grounded on a number of concerns: first, the LBA put it clear that the activity performed in the clinic should meet all the relevant ethical and professional requirements; second, the LBA raised some doubts in relation to one of the pillars of the clinical movement, i.e. taking on only "public-interest" cases, claiming that such a choice could be easily labelled as "politics" (whatever sounds slightly "political" seems to scar the LBA); third, the LBA feared that the clinic might break the competition rules aimed at prohibiting any unfair way of acquiring new clients. We faced the lack-of-knowledge problem trying to explain, whenever we could, the real potential and purpose of the legal clinics.

The biggest problem was (and still is) the scarcity of resources that we can use for the clinic. Public universities normally rely on state funding. Sadly, given the difficult national economic situation, the Government has recently decided to cut our funding. That is why we are looking for new solutions (e.g. having access to private funding).

### **§ 3 - The Staff.**

At the moment our university system does not recognize such a position as that of the "clinical professor" (teacher and lawyer at the same time). For this reason the "in-house" model could not be implemented. Moreover the faculty already has an externship program (the so called "stages") and there is no point in duplicating it by establishing a clinic. However we want the clinic to be rooted in the faculty so that it may become the starting point for a new way of conceiving the university. That is why we managed to implement a hybrid model where in-house and extern activities are conveniently blended (see further paragraph 5).

Given that most of our staff consist of full-time professors the Clinic has to rely on some support from external lawyers. Now the staff consist of 8 professors and 7 lawyers. With regard to the selection criteria, we decided to involve lawyers who had already collaborated in some ways with the Faculty (for example, as contract professors) so as to interact with people well aware of the problems concerned with teaching.

Although the number of people involved might not seem consistent with the small number of cases handled (on average: 6 cases per year), it is to consider that none of these people - neither the teachers nor the lawyers - can work on the clinic on a full-time basis. As regards the academics, in particular, the clinical activity is something exceeding the required work activity which basically consists of (traditional forms of) teaching and research. Moreover we cannot rely on any administrative

staff specifically in charge of the bureaucratic aspects of running a legal clinic. So, professors and tutors are responsible for most of this bureaucratic workload.

#### **§ 4 - The Students.**

The students wishing to take "Legal Clinic" have to apply for it. In 2010 and 2011, at the beginning of our clinical experience, given the experimental nature of our clinic, we had to be cautious and so decided to admit no more than 15 students. However, in spite of this threshold, over the past two years all the thirty-three applicants were admitted. The students admitted to the legal clinic in 2010 and 2011 were in their 4<sup>th</sup> or 5<sup>th</sup> year (we reckoned that it was reasonable to work with experienced students).

From 2012 onwards the above mentioned threshold will be abolished. After interviewing some students we found out that establishing a formal threshold may prevent students from applying for the clinic. So, in order to promote the clinic and encourage the students to apply, we are going to accept all the applications. Moreover also students in their 3<sup>rd</sup> year will be admitted.

"Legal Clinic" is an elective subject, giving students 6 credits.

#### **§ 5 - Activities**

The activities carried out in the clinic cover one semester (Spring Term).

The clinic is based in the Faculty buildings. However, a

number of activities are performed outside the Faculty:

- some activities are carried out in the Faculty (e.g. classes, seminars, simulations, discussion of the theoretical aspects of the case, research activity). With regard to such activities, some involve all the students enrolled in the clinic: for example, seminars focused on lawyering skills (how to write briefs; how to read and understand a decision) and seminars given by US clinicians ;

- some other activities, especially interviewing clients and in general all those activities affecting clients' privacy, are carried out in the lawyer's office;

- finally, some activities take place in court. It is to stress that the students cannot formally represent the client. Under the Italian civil (and criminal) procedure code only the lawyer is responsible for the defence. That means that (1) the students cannot speak before the court and (2) all the claims, briefs, appeals and other acts must be approved and signed by the lawyer in charge of the defence. Although only the lawyer is in charge of representing the client - therefore only the lawyer can speak before the judge - our students (with the judge's permission) are allowed to attend the hearings. Although the students do not play a formal role in the trial, under the lawyer's supervision they perform a number of activities: in particular, they interview the client, do research, write memos and give a significant contribution to the drafting the of acts relevant to the proceedings.

The students work in small groups (2-3 people), each group being supervised by a professor and a lawyer. Depending on

the complexity of the case other tutors (e.g. Ph.D. students) may be asked to help, but basically the supervision activity is jointly carried out by the professor and the lawyer. As to the nature of the supervision, so far a "directive" approach - rather than a non-directive one - has been mainly followed. As a matter of fact directive supervision is closer to our way teaching and so sticking to it, at least at the beginning, seemed to be sensible. However it is our intention to improve our staff's skills by experimenting new forms of teaching which foster students' reflective learning.

Finally, in order to encourage a fruitful discussion among the students on the subject matter of the course, the teachers organize "rounds" where students can talk about the cases they are dealing with and exchange ideas (on average, twice a semester).

## **§ 6 - Cases.**

As mentioned above the Clinic is characterized by a multidisciplinary approach involving different legal fields: Civil Law, Criminal Law, Labour law, International and EU Law, Comparative Law, Family Law, Anti-discrimination Law.

We reckoned that the cases taken into account in the clinic should have two features: being significant for the teaching goals we would like to reach (i.e. cases that help students empower their legal reasoning); being not too complex and long-lasting, given that the course covers only one semester (and the resources at our disposal are



limited).

The multidisciplinary nature of the clinic was more evident in 2010, when cases covering very different fields were handled: unfair dismissal, medical malpractice, divorce involving foreign people, immigration (in particular, people prosecuted for being illegally in Italy). In 2010 seven cases were taken.

In 2011, in consideration of the existing collaboration with the Open Society Justice Initiative, which has been giving support to the clinic, the cases has been more focused on immigration and statelessness, with specific regard to the conditions of Roma people. In 2011, only one case out of five was a "classic" civil law case (in particular: a case on consumer's rights).