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THE CONSTITUTION LAW REALIZATION FOR PROFESSIONAL LEGAL AID DURING ADMINISTRATION OF JUSTICE

Oksana KRUSHNITSKA

Abstract

The main task of any democratic state is the protection of human rights and freedoms, their affirmation and assurance.

The problem of determining the legal status of the individual, its content and structure is in the polemical theory. The legal status of an individual serves as a means to ensure the realization of the needs and interests of a person through the mechanism of legal regulation of social relations. The notion of a "mechanism of legal regulation" is still debatable, as the notion of a mechanism for ensuring the constitutionally-legal status of the individual and the concept of human rights guarantees in this mechanism.

The professional legal assistance of a defender is intended to guarantee not theoretical, but practical and effective rights, and this especially concerns to the rights to protection from criminal charges, taking into account the prominent place which in a democratic society has the right to a fair trial from which they follow. It is important that the practice of applying national courts' provisions on the right to effective counsel assistance be exercised in the light of the practice of the European Court of Human Rights, since not only the qualification of the court but also the qualification of the counsel, its practical and effective protection is a key criterion for fair administration. The courts must take this practice into account when verifying the right to protection during a pre-trial investigation and trial in a case and in the presence of signs of "symbolic provision of services" by a defense counsel, a judgment must be revoked.

Keywords:

legal aid, lawyer, legal assistance, legal services, the institution of legal protection.

The timeliness of the topic of the article is due to the fact that the formation of civil society and the rule of law highlights the problem of ensuring the rights and freedoms of citizen. It is difficult to imagine the realization of the Supreme value of human and civil rights and freedoms

without an effective system of General and special legal guarantees, which ensure the rights and freedoms of man and citizen.

As one of the most important, the right to qualified legal assistance has been enshrined in international legal acts, such as the international Covenant on civil and political rights [1] and the Convention for the protection of human rights and fundamental freedoms [2]. The need for legal aid arises constantly and everywhere. There is no sphere of life or human activity in which one does not need to know and apply certain legal norms.

Qualified legal assistance may be required in matters relating to work or study, when applying to state or other bodies, the purchase or sale of goods, participation in the activities of public organizations, receipt of state pensions and social benefits, etc.

Introduction

A society based on democratic values, social justice and fundamental human rights in which every citizen is equally protected by the law. The provision of legal aid sets the foundation for the achievement of equality, the advancement of human rights and freedom which are the founding values of our Constitution thereby ensuring the protection of the rights as enshrined in the Bill of Rights.

Legal aid is: "state, non-state or private (commercial) activities of professional lawyers to provide qualified assistance to individuals and legal entities in the understanding, correct use and compliance with the law, which is aimed at protecting and promoting the rights and legitimate interests of citizens."

Legal assistance is provided by the state (state notary), non-state (bar Association) or private (legal Advisory offices, private notaries, lawyers who are not members of the bar Association and are engaged in private practice).

The professionalism of lawyers and the qualification of assistance is a constitutional guarantee and a necessary condition for the provision of legal assistance [3].

As for the subjects of social relations that need qualified legal assistance, it can be both individuals, and all statuses – a citizen of the country, a foreign citizen, as well as a stateless person, and legal entities – state, public, private, joint-stock and other organizations.

Theoretical grounds

Despite the importance of the problem of the the constitution law realization for professional legal aid during administration of justice, modern scientists are insensitive to this question. It is almost unexplored area of civil procedure law. This is confirmed by the small number of publications on the problem. There is no special monographic work, this problem has not been the object of dissertation research [4].

Article grounds. Article 59 of the Constitution of Ukraine guarantees every person the right to legal assistance, which is provided free of charge in case established by law.

There is no separate law in Ukraine which would establish eligibility criteria and the procedure for receiving legal aid, or the system for administration and evaluation of legal aid services. Instead, a number of laws guarantee varying degrees of legal aid to different categories of persons [5]:

- indigent persons and persons who, due to other objective reasons, are not able to hire a defense lawyer are entitled to receive legal aid in the course of inquiry, pre-trial investigation and court hearing;
- rehabilitated individuals are eligible for legal aid in cases concerning rehabilitation;
- war veterans eligible for legal aid on issues concerning their social protection;
- persons who have been subject to unlawful actions of investigatory agencies, procuracy or courts are entitled to legal aid in cases concerning compensation for the damage incurred by such unlawful actions;
- persons undergoing psychiatric treatment are entitled to legal aid in cases related to provision of psychiatric treatment;
- persons filing documents - refugees are entitled to all kinds of legal aid;
- underaged parents are entitled to legal aid in the form of court representation in cases concerning their parenthood;
- persons in difficult situations including:
 - persons who are not able to take care of themselves due to their age, illness, disability or persons who have no relatives to provide care and assistance to them;
 - persons who experience hardships due to unemployment and are registered with the state employment service as seeking job, and persons suffering hardships as a result of natural disasters and catastrophes ;

- persons who are refugees due to the armed or interethnic conflicts when their monthly income is below the subsistence level;
- children and young people who experience hardships due to a physical disability, illness, orphanhood, homelessness, low incomes, conflicts and family violence;
- foreign nationals are eligible for legal aid in accordance with Ukraine's international treaties on legal aid in civil and criminal cases.

Services included as part of legal aid

For both civil and criminal cases, legal aid is provided in the form of legal advice, legal representation (in litigation and labour arbitration), legal assistance, and provision of legal information. Legal aid lawyers also provide general assistance in navigating the justice system and in executing legal documents.

Specialized legal aid services are provided to disadvantaged population groups, including persons with disabilities, internally displaced persons, children, women, the elderly, family of military service members, and migrant workers [5].

Process for obtaining legal aid [4]

Legal aid is provided upon request from the person who wants legal aid, or from the police, the prosecutor, or the institution that oversees appointment of legal aid providers. The court presiding over a case must also inquire and assess eligibility during the first appearance of the parties.

In both criminal and civil cases, a person must prove her/his eligibility by proving status as a recipient of welfare or state subsidies, by demonstrating family hardship, or by providing evidence of low income (if employed) or membership of a protected group. It may also be determined by officials that the interests of justice require the provision of legal aid.

In criminal cases specifically, no proof of eligibility is necessary when the State is obliged to provide legal aid by law. Entitlement to legal aid may also be determined on the basis of the gravity or complexity of the matter.

Free primary legal aid services can be obtained at the offices of State-funded legal aid institutions, legal advice centres in cities and towns, and civil society organisations. The interested party can also contact the bar

association which maintains a roster of qualified lawyers available to provide legal advice, or call the hotline established by the Legal Aid Centre [4].

Beyond primary legal aid, the State covers the cost of other legal aid services in both criminal and civil cases to those meeting eligibility criteria.

In both criminal and civil cases, legal aid providers receive a fixed fee for each case they work on, or can be paid on an hourly basis for actions that the State has identified. The legal aid institution that employs the legal aid provider is responsible for disbursing payment (although sometimes, payment is done through the national or local bar association.)

Legal aid in criminal cases Who is eligible?

Under the law, legal aid is available to persons arrested and detained on criminal charges, persons charged with a criminal offence, persons imprisoned on criminal charges, and victims of crime. The State is obliged to provide legal aid to persons who meet a financial threshold, and minors, persons with certain physical or mental disabilities, persons who face potential life imprisonment or death penalty, in cases when these persons have not yet entrusted a defender.

At what stage of a criminal case?

Under the law, qualified legal assistance may be requested from the moment a law enforcement representative restricts the suspects/defendant's freedom, or at least from the moment charges are officially filed. It is also provided during trial and for any appeal or cassation, as well as for representation of prisoners in cases involving serious disciplinary charges. It is not prohibited by law for the police to interview a person in the absence of a lawyer, and it is somewhat common for pre-trial detention to be used, even when suspects have access to legal aid services [6].

Are the extents, which services to provide legal assistance in criminal matters considered to be effective? The independent national experts have estimated that lawyers provide legal assistance more often than private practitioners do. For example, submitting arguments in favor of the suspect or the accused, issue a pretrial investigation or investigation to establish doubt about the suspect or the accused guilty even if he may be guilty. In addition, experts identify the 'well-trained and / or qualified lawyer', 'a poorly prepared prosecutor', 'the judge's objective analysis of evidence and testimony', and 'the strength of the evidence' are the most influential factors in achieving the dismissal of charges or acquittal in criminal cases [1].

Legal aid in civil cases

Who is eligible? Under the law, legal aid is available to persons who meet a financial threshold, and when the law notes that the interests of justice require it (pic. 1).

Pic. 1 – 4 types of the civil cases for which legal aid services are most commonly sought

Legal aid services are also commonly sought for work injury cases

For what actions is a party eligible to legal assistance? Further provision of primary legal aid, more specific legal aid, may be offered to assist in the preparation and filing of complaints and responses, access to public authorities, protection of victims of violence, deposition or other formal requests, negotiation between the parties, and the development of movements. Legal aid may also be granted in the course of judicial proceedings, including for any appeal or cassation.

Public interest litigation / class action cases: Independent national experts are of the view that there is public demand for public interest litigation and class action cases addressing labour rights, discrimination, consumer rights, health and environmental protection. Staff lawyers at the Legal Aid Centre sometimes uniformly challenge practices that have damaged or have a high risk of damaging the interest of the public [4].

Legal aid and informal justice systems

Informal proceedings normally used to resolve disputes related to marriage and family, land and property, inheritance, informal agreements and labour agreements. According to national experts, people prefer to resolve disputes through the informal procedure, as it requires less time, because the informal courts are in a more convenient place and so people better understand how they work. There is also a general perception that judges or decision-makers in the informal proceedings can better judge a fair outcome acceptable to all parties, because they know the parties concerned. Informal justice mechanisms allows a lawyer or paralegal to assist in the formal mediation / alternative dispute settlement, and there are mechanisms to transfer cases between the formal and informal justice systems.

Right to legal aid

The Ministry of Justice, the legislative branch and the bar association played an instrumental role in this reform. State-funded legal aid is available at national, regional and local levels. Services included as part of legal aid

For both civil and criminal cases, legal aid is provided in the form of legal assistance, legal advice, legal representation (before a court), general assistance with navigating the justice system, and assistance with the execution of legal documents [8].

Process for obtaining legal aid

The process of obtaining legal aid is initiated at the request of the person who needs legal aid. The court may appoint counsel ex-officio if the accused does not have the assistance of counsel for his defence, and this is deemed necessary. In order to prove the right to legal aid in criminal and civil cases, a person must prove the status of the recipient of social security or must provide evidence of low income (for example, sending a report on financial resources in a criminal case; tax returns for the previous year in civil cases).

Awareness of the right to legal aid

A public information campaign to raise awareness about the right to legal aid and how to access legal aid services was conducted by the State in

2014-15. Independent national experts estimate that the general population is 'somewhat knowledgeable' about legal aid services.

Costs to recipients

Primary legal assistance is provided free of charge in the office of the public defender, the legal advice centers in cities and towns, as well as in the offices of the bar Association, which maintains a roster of qualified lawyers who are able to provide legal advice. As a rule, legal aid services are provided free of charge in criminal and civil cases for those who meet the eligibility criteria. However, under certain circumstances, the recipient of legal aid may be required to pay the statutory percentage of the cost, as well as the premium provider of legal aid more than the amount paid by the government or a donor [4].

Provision of legal aid Legal aid in criminal cases

Who is eligible?

Under the law, legal aid is available to persons arrested and detained on criminal charges, persons charged with a criminal offence, victims of crime, and witnesses.

At what stage of a criminal case?

Under the law, legal aid is provided from the moment a law enforcement representative restricts the suspects/defendant's freedom, or at least from the moment charges are officially filed.

The police is obligated to inform persons charged with a criminal offence of his/her right to legal aid. It is generally prohibited for the police to interview a person in the absence of a lawyer, unless a person waives this right. In practice, the police and prosecutors wait a limited amount of time for a legal aid provider to arrive, but if it takes too long, the questioning begins even in the absence of a legal aid provider.

To what extent are legal aid services in criminal cases seen as effective?

Independent national experts estimate that legal aid lawyers are less likely than private lawyers to perform actions such as 'presenting arguments in favour of a suspect's/defendant's release pre-trial', or 'giving advice to the

suspect/defendant in private before any contact with a state justice official' [4].

Furthermore, experts identify 'a well-prepared and/or highly skilled lawyer', 'having a legal aid lawyer', 'the strength of the evidence', and 'bribery/corruption' to be amongst the most influential factors in reaching a dismissal of charges or acquittal in criminal cases.

Legal aid in civil cases

Generally, there are no specific requirements to qualify for legal aid in civil and administrative cases. It is assigned by authorised agencies at their discretion.

For what actions is a party eligible for legal aid?

Further to the provision of primary legal aid, more specific legal aid can be offered to assist with drafting complaints and motions, and for the protection of victims of violence. Legal aid can also be provided during trial.

Independent national experts are of the view that there is public demand for public interest litigation and class action cases addressing labour rights, consumer rights, health and environmental protection [4].

At the regional level, staff lawyers of public defender institutions sometimes coordinate to uniformly challenge common violations of national and international due process rights and human rights.

Legal pros

The legal aid has a great role for present-day society. Without adequate access to legal aid, those living in poverty or facing mental or intellectual difficulties can face the threat of exclusion from the rights guaranteed by law and by Ukraine's Constitution and Charter of Rights and Freedoms. Facilitating access to essential legal and social services for these individuals would reduce the likelihood that they become, or remain, trapped in a cycle of poverty.

The citizens of Ukraine have historically faced systemic barriers to justice, and today are overrepresented in our justice system. Adequate access to legal services is an essential step toward addressing the injustices Indigenous peoples continue to face when they come into contact with policing, the courts and our correctional institutions. Ensuring a robust publicly funded legal aid system to meet these needs is an important component of a just society.

And, unfortunately, matrimonial discord and separation are all too common in our society. Many people need help sorting through the legal issues that these events can raise, including the possibility of family violence or emotional and financial crises, whose impact can be felt in every community. Without legal assistance, vulnerable family members, particularly children, are at risk of physical harm, emotional trauma and economic insecurity. This in turn can lead to additional draws on already scarce community resources, such as police, healthcare, mental health services, social assistance, women's shelters, housing subsidies and homeless shelters. Society needs to ensure that those who cannot otherwise afford legal advice or representation have a system of legal aid to assist them with their legal issues when the need arises.

Equal access to justice has very real consequences for residents of every community in BC. An increased government commitment to make that happen would be a welcome step.

Legal cons [7]. The concept of free and independent legal advice is a good one and the fact that solicitors are available to advise detained people is also very good. This will prove to be a huge business interest for legal aid solicitors and will cost the country millions upon millions. Consider the following example.

A person is arrested and given his rights. While in custody he asks for a solicitor (free of charge) and he has a consultation and receives advice. The solicitor then assists in obtaining police bail for this person and eventually represents him/her in court. All this is paid for by legal aid.

Now, while a law-abiding citizen might end up in a situation where he needs advice and assistance from a solicitor, maybe once in their lifetime, a career criminal tends to get arrested regularly and have multiple court cases running concurrently. They tend to get in with one solicitor who they get to know quite well and will ask for that particular solicitor when in custody. This whole process becomes a money-making machine for legal aid solicitors who prolong cases and legal enquiries to suit their client, thus hindering police investigations.

Everybody is entitled to free and independent legal advice but believe me when I say that career criminals have more knowledge of the law than even some police officers. So, there is a question, why should these people be provided with all this expensive assistance at tax payers' expense?

Every citizen should have a right for free legal advice while detained for questioning, on a maximum of three occasions, and after that he/she either has to pay their own costs or forfeit any such rights.

This would control any chance of abusing the system by the career criminals of the legal aid solicitors or their representatives. Law-abiding citizens rarely find themselves on the wrong side of the law and this would ensure that on the occasion they require help they would get it [7].

Conclusion

Legal aid is: "state, non-state or private (commercial) activities of professional lawyers to provide qualified assistance to individuals and legal entities in the understanding, correct use and compliance with the law, which is aimed at protecting and promoting the rights and legitimate interests of citizens."

The provision of legal aid sets the foundation for the achievement of equality, the advancement of human rights and freedom which are the founding values of our Constitution thereby ensuring the protection of the rights as enshrined in the Bill of Rights. According to up-to-date world situation, the legal aid will prove to be a huge business interest for legal aid solicitors and will cost the country millions upon millions.

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