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The Free Qualified Legal Aid in Russia: Theoretical and Practical Problems

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The article outlines the legal foundations of free legal aid in Russia. Advantages and shortcomings of the new legislation of the sphere of rendering of a free legal aid are analyzed. Process of formation and development of institute of a free legal aid is revealed, the basic characteristics, subject and types of free legal aid are explained. There is analyzed the theoretical and practical problems of implementing the right to qualified legal aid free of charge.

In result of this research intrinsic characteristics of the qualified legal aid is offered, there is revealed the content of concepts: «the free legal aid», «consultation in oral and written forms», and also the list is represented of alternative types of a free legal aid.

The containing in article the analysis and conclusions make a contribution to improvement of the legislation and practice of its application in the sphere of rendering of a free legal aid in the Russian Federation.

Keywords: Free qualified legal assistance, types of legal aid, public legal bureau, legal clinic, non-governmental legal aid center.

Introduction to problem of research

The right to qualified legal assistance stipulated in clause 1, art. 48 of the Constitution of the Russian Federation: «Everyone shall be guaranteed the right to qualified legal assistance. In the cases envisaged by law, legal assistance shall be provided free of charge». Accordingly, the State grants to persons, who haven't sufficient funds, equal opportunities as those persons who can pay for a specialist. Namely free legal aid is a guarantee of constitutional principle of equality and rights and freedoms including the law and court, stipulated in part 1 of art. 19 of the Constitution of the Russian Federation. Despite

the fact, that the Russian Constitution guarantees free care, the conditions of its provision are inadequate.

Legal bases

The Uniform Act of regulating the provision of free legal aid have been waiting for a long time. Initially, it was assumed that will be adopted federal law on free legal aid. However, after the adoption of the Constitution of the Russian Federation (on December 12, 1993) it didn't happen. Only after two decades, namely, on November 21, 2011, was adopted the Federal Law № 324-FZ "On the free legal aid in the Russian Federation"¹ (Law), which came

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into effect on January 15, 2012. But it doesn't mean, until that time there is no work in this direction. New Federal law was adopted in 2002 «On advocacy and the advocateship in the Russian Federation»², in Art. 26 which defines the categories of people and conditions for the provision of legal aid lawyers. In 2003 the Russian government issued a decree to establish order payment of compensation lawyer who provides legal aid free of charge³.

The experiment to establish a state system of free legal assistance to low-income citizens began in 2005⁴. The Federal Government agencies – Public legal bureau were established in the ten regions of the Russian Federation⁵. The Bureau shall have the right to instruct a lawyer to provide free legal assistance to a person who has applied to the bureau, under the contract, including his representation in civil proceedings and in enforcement proceedings in a civil case.

Under the regulation «On the provision of free legal assistance to low-income citizens» approved by Government Resolution № 534⁶, payment conditions of lawyers have objective (special) temper and can't be applied in determining the reasonableness of costs services representative (lawyer) in other cases legal aid. Judicial practice has confirmed it⁷.

Regulation «On providing free legal assistance to public legal bureau»⁸ was developed in 2008. This document sets out categories of people who may be assisted free of charge, the types of legal aid, a list of documents required for obtaining such assistance, etc.

Free legal assistance provided by government bureau in the first year has proved its effectiveness and relevance, so the experiment was continued to extend and finance in 2007-2010.

Today, the public legal bureau form the basis of state-governmental system of providing free legal assistance are the highest executive

authorities of subjects of the Russian Federation, provide legal assistance on their own or with the assistance of legal aid lawyers.

Adopting in the 2011 Federal Law. «About free legal aid in the Russian Federation», legislator had secured the basic guarantees of rights of Russian citizens to receive free qualified legal assistance and organizational and legal basis for the formation of state and nonstate systems of legal aid.

However, despite the urgency and importance of constitutional law, in the new law there is no common understanding of what is meant by free, qualified legal help. This leads to uncertainty in realization of this right.

Discussion and statement of the problem

The theoretical framework for legal aid as a legal category, has been extensively analyzed by Kashkovsky and defined them as assistance provided by the implementation of professional lawyer, which has the main aim of promoting the prevention of violations of human, freedoms and legitimate interests of entities, eliminating or reducing the adverse effects of such violations and to restore the properposition of an entity (by Kashkovsky 2009).

From this definition and the essential features of the legal aid: mandatory professional basis for such activities, directivity for achieving human rights goals and the occurrence of such effects, as the prevention of violations of the right, minimize the consequences of such violations, restoration of rights.

Talking about the implementation of the right to legal assistance, need to draw attention to the fact, In the first: state assumes responsibility in certain cases (provided by law), ensure the implementation of this law on a pro bono basis, and in the second: the legal aid, including free of charge, must be qualified.

The Russian legislation hasn't uniform set of requirements, that correlate with attribute of qualified legal assistance. Such requirements are formulated for individuals only in some normative legal acts, performing qualified legal assistance. These include: lawyers, notaries, patent attorneys, prosecutors.

By a new law in this against provide a more loyal qualification requirements to persons providing free legal assistance: by general rules just necessary and sufficient a law degree (art. 8) with the exception of only a legal clinics. Individuals enrolled in the legal profession in the educational institutions of higher education, participate in the provision of free legal assistance to legal clinics, under the supervision of persons with higher education in law, responsible for training of persons (art. 23 of the Act).

In our opinion, the qualification should be expressed in three main aspects:

- in the characterization of the subject, rendering legal aid, expressed in the presence of his qualification, evidence of legal knowledge and experience in this field;
- as an aid, is meant by a respect for the law, integrity of the legal and proper manner, from the standpoint of professional ethics, the service rendered;
- in performance, namely achieving the necessary, desired and legal result.

Legal help can be called skilled, legal aid may be called skilled, if only all of these criterias will be observed.

Free legal assistance refers specifically to a person, who receive such assistance, and the work of entities providing such assistance, must be paid either from the federal budget or the budget of the subject, if this is the state system of legal aid, either at their own expense organizations, included in the nonstate system of free legal aid.

However, there are considerable number of problems in this issue. For example, the implementation of part 3. art. 16 of the Criminal Procedure Code of Russian Federation. reimbursement of expenses for providing assistance to the suspect and the accused as intended by post factum, and after considerable delay, counsel are paid only days, when he actually there, during the questioning at the preliminary investigation or in court, such work as reading materials of the case and the indictment, the writing of the appeal, writing petitions are not paid. This leads to situation, when the lawyer advent in court without first examining the case, or he requests the defendant, to pay «the part of consumption», bypassing the cash office of legal advice, or in most cases, due to the fact that the amount of reimbursement are the defenders of the designated low or very young trainee lawyers. All of this is not always conducive to providing quality legal assistance (by Soboleva, 2003).

Today in advocacy act specified the source and funding for services, rendered by an attorney within the state system of free legal aid. For “other” lawyers the system of compensation has not been established and lawyers will be able to deny to persons entitled to free legal aid. “Lawyers won’t work with the bureau, established by the legislation of the Russian Federation to provide free legal aid, because for lawyers it is not financially profitable. (by M. Mahiboroda, 2011).

Art. 29 of the Federal Law “About free legal aid in the Russian Federation”, secures funding expenses, associated with the creation and operation of free legal bureau and (or) the salaries and expenses of attorneys, providing free legal assistance to citizens, as an expenditure commitments of the Russian Federation, with such a regulatory framework the issue of financial security quality of legal aid is still open.

Another important problem in the implementation of the right is an information provision about free legal aid, includes available information on the subjects of aid, and independent access to legal information of persons in need of free legal aid. Often citizens don't know, that it is possible to get free legal assistance, but they don't know how and to whom they must to contact and what kind of documents are necessary.

Because of this, law is ordered to executive, executive of subjects of the Russian Federation, the governing of state budget funds, local governments and officials to provide legal information to the public (article 28).

However, the quality of execution of these instructions will entirely depend on the subjects who implemented it.

Free legal aid may be provided in the main types: legal advice, preparation applications, complaints, motions and other legal documents; represent the interests of citizens in the courts, state and municipal authorities, organizations in the cases and in the manner established by law. This list has an open character. The general principle: Allowed any kinds, which are not prohibited by law. The law hasn't common understanding of what is meant by each of these types of assistance.

Conclusions and offers

Despite the presence of different types of definitions, the law doesn't have enough formal logical definitions. Key concepts disclosed by specifying the functional tasks and powers of an authority (articles. 9 – 12 of the act). Completely absent determining the most basic concepts, such "free qualified legal assistance," "legal verbal advice", "legal advice in writing."

We propose to be understood free legal aid type of free assistance to citizens, established by law, provided in legal public relations by a person having qualification and the actual legal

knowledge, that will ensure high quality legal services and to achieve the desired legal result.

Act on consultation claims, that it is possible to provide two forms (verbally and written). In our opinion, under the verbal advice should be understood a direct communication with the customer for clarification on legal issues, and written is drawn on paper or electronic media recommendations and explanations, which are transferred to client for personal consultation in the process of counseling. These definitions can be guided in practice.

Counseling is the most popular among all types of legal aid, because the legal profession is involved in the treatment of citizens for an explanation of legal issues, in other words, for advice. The law established, that the legal advice in verbally and in writing form can exercise all individual and legal persons – participants of state or nonstate systems of legal aid. At the same time the federal executive authorities and their subordinate agencies, executive of subjects of the Russian Federation and their subordinate agencies, government budgetary funds provide advice such type of legal assistance on matters within their competence.

Preparation of applications, complaints, motions and other legal documents by Y. Panchenko is the creation and delivery to the subject obtain legal information materialized in a particular medium, prepared in accordance with legal requirements and aimed at the emergence of change, termination of rights and responsibilities of the recipient of legal aid in the problem legal situation (Panchenko, 2011).

All of this subjects mentioned in the law, has the right to make legal content of the documents. Only the federal executive, executive of subjects of the Russian Federation and the government budgetary funds can provide this type of legal assistance to citizens, who need the social support and the social protection. (article 16). However,

the phrase “necessity of social support and social protection” is doesn’t currently exist, it is not clear in which cases the officers will be able to respond to the legal basis for the request refused and whether you need to provide documentation (what type), confirming this status.

Representing of interests of citizens in the courts, state and local government agencies, organizations to a greater extent than other types, regulated by law, as implemented on the basis of special powers transferred to the subject of services subject to receipt and processed in accordance with established procedure (power of attorney, contract assignments, etc. etc.) or derived directly from the law.

Representation of interests can take the form of procedural representation (participation of persons in civil proceedings (article 46 of the Civil Procedure Code)) and may consist of an actual actions of legal significance (representing the interests in organizations).

Act binds the largest number of restrictions on the parties of with this type of grant aid. Representation of interests cannot exercise legal clinics and private centers of free legal aid. However, the latter have the right to define themselves: types of legal aid, the categories of citizens eligible to receive it, and a list of legal issues on which such assistance could be provided.

The legislator took legal advice verbally and in writing to the competence of legal clinics, and drafting applications, complaints, motions and other legal documents. Probably, this situation is related to the specifics of the process of providing legal aid clinic (the student is working with clients under the supervision of persons with higher legal education).

Since the list of free legal aid has an open character can talk about other (alternative) forms of free legal aid, which can use all the subjects of care:

- Reception of citizens in the «open days», to ensure the availability of qualified legal assistance (usually conducted by state and local authorities);
- Lawyer's outreach activities of the board of Mordovia Republic, practiced visits to the residence of pensioners and the disabled for advice and preparation of legal documents.
- Legal aid training (organized, systematic process, which is characterized by symptoms inherent in legal education, which consists in the formation of citizens' legal knowledge and skills needed to overcome the typical problem of legal situations)⁹;
- «Support» of transactions (transactions processing related conclusion of legal documents);
- Legal review of contracts (compliance with the requirements of contract law);
- Speech in the media (newspapers, radio, television), with advice on legal matters. Thus, in the Ulyanovsk region's lawyers regularly speak with the explanation of the current legislation;
- Cooperation with various public reception (for example: lawyers perform a free reception of citizens in public bureau chief federal inspector);
- Online Legal Advice: This type used by students from Republic of Tatarstan, Chuvash Republic, Nizhny Novgorod and Saratov regions and other regions.
- Conducting a direct phone line. For example: Adoption of the schedule and location of such lines in the media of the territorial department of the Ministry of Justice of the Volga Federal District. Citizens can get answers to the most pressing questions in these activities, that relate to the activities of the management.

- Preparation and publication of booklets on the most topical issues of law;
- And others.

Being an independent legal aid institution, providing free legal assistance, advocacy and notary are guided by special laws, which also includes lists of legal aid.

Normative legal acts stipulate a wide range of free legal assistance, and it is open. However, for using the basic types and a limited number of questions, can only the certain categories of poor people. (for example: withdrawn issues related to business activities).

Compared with the previously applicable law, the list of categories of citizens have expanded, but in any case, citizen must provide

documentation confirming his accessory to a certain privileged categories to obtain legal aid free of charge.

Conclusion

Adoption of the Federal Law "On legal aid in the Russian Federation" is an important step towards building a legal state and also a way to deal against legal nihilism. But most importantly, to assist was a high-quality and efficient and that in practice the characteristics of the "free" and "bad" are will not be synonymous.

Analysis of current legislation and its application allows us to conclude the need to improve regulation and practical application of legal aid in the Russian Federation.

¹ Collection of the legislation of the Russian Federation. 2011. № 48. St. 6725.

² Collection of the legislation of the Russian Federation. 2002. № 23. St. 2102.

³ The resolution of the government of the Russian Federation from July 4, 2003 of No. 400 «About the size of compensation of the lawyer participating in quality of the defender in criminal legal proceedings to destination of bodies of inquiry, bodies of preliminary investigation or court». Collection of the legislation of the Russian Federation. 2003. № 28. St. 2925.

⁴ Resolutions of the government of the Russian Federation from August 22, 2005 of No. 534 «About carrying out experiment on creation of the state system of rendering of a free legal aid to needy citizens». Collection of the legislation of the Russian Federation. 2005. № 25. St. 3615.

⁵ It is the Republic of Karelia, the Chechen Republic, the Volgograd, Irkutsk, Magadan, Moscow, Samara, Sverdlovsk, Tomsk and Ulyanovsk areas.

⁶ Collection of the legislation of the Russian Federation. 2005. № 25. St. 3615.

⁷ Look: The resolution of FAS of the East Siberian district from 19.02.2007 No. A10-3554/06-F02-279/07 on business № A10-3554/06http. URL: www.resheniya-sudov.ru/2007/209152/

⁸ The resolution of the government of the Russian Federation from December 25, 2008 of No. 1029 «About the state legal bureaus». Collection of the legislation of the Russian Federation. 2009. No. 2. St. 229.

⁹ Look in more detail: V.Yu. Panchenko Legal aid (questions of the general theory): monograph. Krasnoyarsk: Sib. feeder. un-t, 2011. Page. 148–153.

References

1. Kashkovsky V.S. (2009) General-theoretical bases of research of a legal aid as legal category and social phenomenon: theory and practice questions: yew.... edging. juris. sciences, 8.
2. Soboleva A. (2003) Free legal aid: Russian practice and standards of the Council of Europe. Russian justice (5), 37.
3. Mahiboroda M.N. Problem aspects of granting a free legal aid on civil cases in the Russian Federation. Russian justice (6), 69.

Бесплатная квалифицированная юридическая помощь в России: теоретические и практические проблемы

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В статье рассматриваются правовые основы оказания бесплатной юридической помощи в России. Раскрываются основные характеристики и виды бесплатной юридической помощи. Анализируются теоретические и практические проблемы реализации права на получение квалифицированной юридической помощи бесплатно.

Ключевые слова: бесплатная квалифицированная юридическая помощь, виды бесплатной юридической помощи, государственное юридическое бюро, юридическая клиника, негосударственный центр бесплатной юридической помощи.
