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Legal Aid as a Form of Legal Assistance in Realization of Personal Rights: the Functional Aspect

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Main directions of legal assistance impact to other legal phenomena reflecting its role in the ensuring of the right mechanism are discussed in this article. The author marks out constant and variable functions of the legal aid, offers arguments for the need to examine the functions of the legal aid on individual and social levels.

Keywords: legal aid, the functions of law, legal activities, ensuring the right, legal assistance in realization of personal rights.

Legal aid is one of the main forms of legal assistance in realization of personal rights. It is understood as facilitating by legal means of categorical unauthoritative professional and organized assistance in realization of the subject of law legal capacities so as to transform a problem situation and favorably satisfy his/her individual interests. Despite the existence of separate studies (Mohd Nor, Hambali, Hussein, Jali, Nordin, 2011; Moorhead, Sherr, Paterson, 2003; Lubet, Stewart, 1997; Harris, 1993), which are mainly on advocacy's functions, the question of legal aid functions as a special form of legal activity and a means of rights insurance have not received extensive consideration in the legal science up to date.

The problem of the state legal phenomena function in substantive as on activity level (state duty, rights, legal awareness, enforcement and other legal phenomena) is the basis for discussion

in jurisprudence. At the same time there are studies on modern state of the theory of legal phenomena functions (Kartashov, 2005).

Based on the understanding of the function (from Latin *functio* – accomplishment, fulfillment) as the object's role within the system, as an activity of an organ, organism or a position and also based on the above-mentioned results of the functions of legal practice study it is possible to give the following definition: these are relatively isolated areas of its homogeneous positive impact on subjective and objective reality, in which its nature is specified in and its transformative character is displayed, along with its purpose for individual, society and state.

Point

Legal aid function being the direction of its effect demonstrates the goal of providing the legal aid for its recipient (individual citizen,

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organization, other subjects of law) in the first place and in the second place its social value, the value to the society and the state.

Hence the legal aid function has two levels of display. The first one is the individual one, i.e. the level of specific recipient and specific services interactions on the provision of specific personalized interests (rights, freedoms and legitimate interests) of the recipient in certain legal situation. The individual level of the function of the legal aid display includes activity of other social subjects such as governmental and local authorities, if this activity is a part of specific problem legal situation being an object of supporting legal action. We can say that on individual level the function of the legal aid display reveals and increases its value for a specific recipient, answers the question why it is necessary to establish their individual, personal goals and interests.

The second level of the function of the legal aid display is social (public). It answers the question why legal aid to specific subject of law in establishing its individual interests is necessary for society and state; why it is valuable and what purpose it has. It is important to take into account that characterizing functions of the legal aid on social (public) level one should consider sufficiently abstract premise of why legal aid is necessary *basically* and not in a private case. Legal aid in any particular case may not meet and run counter to the interests of the public and state.

The author believes that the basic function of legal aid is *compensatory*, consisting of filling in the gaps in the recipients legal knowledge, competence and skills, along with ability to use one or another legal mean to pursue their individual interests (quintessence of compensatory function displays in various forms of legal aid such as legal information, legal advice, legal documents drafting).

Compensatory function of the legal aid displays also in substitution of recipient's legal activity (if a professional lawyer participates in various legal procedures and proceedings rather than recipient) as well as in professional legal support of relevant in law recipient's activity in pursuing his individual interests, when the latter and services act together (criminal defense e.g.).

Without the compensatory function legal aid of any kind and in any form has no sense and no purpose. Study of the legal aid practice leads us to the conclusion that the compensatory function is not only basic, but is the only constant in fact (in other terms – permanent (Kharchenko, 2009) as it's realized in any case of its proper rendering. Otherwise we should talk about the dysfunction of legal aid and its deviation from the given model and standard.

Along with the permanent compensatory function legal aid can have the variable function.

There are at least two reasons for singling out variable functions of legal aid. Firstly, the reasons of activity matter depending on the nature of each specific problem legal situation and on goals of support. Variable functions are not necessarily found in the actions of the recipient if they don't benefit him (e.g. attempt to divert investigation on a wrong track is hardly relevant to the law enforcement function). Secondly the reasons of subjective matter. Aiding may be the principal activity of the legal aid services, may take some more or less quality and (or) quantitatively significant place among the entire spectrum of their legal practice and may have different by their legal nature grounds and procedure of implementation. If the attorney gives absolute priority to his clients interest and he is obliged under the legal aid agreement to defend the interests of his client to the last, then the subjects listed in the article 46 of the Code of civil procedure of Russian Federation or the prosecutor filing an application by the article

45 of the Code of civil procedure of Russian Federation act in the public interest. They are not bound by the recipient's legal position and may resign a claim in whole or in part.

Example

To demonstrate the reasonableness of singling out the variable functions of legal aid let's consider one of the existing opinions on the function of advocacy. According to this opinion there are preventive, restorative, protective, disciplinary, sanitary advocacy functions (Melnichenko, 2007). It is difficult if not impossible to imagine the situation when attorney's legal aid would *simultaneously* perform all the functions listed by the author.

Compensatory function in its content (depending on the nature of the problem legal situation the recipient finds himself in) may include filling the gap in legal knowledge and competence in protection of rights and freedoms; their defense; prevention of violations and other activities (in different combinations) directed to change the problem legal situation.

The variable character which the most legal aid functions have on the social level is determined by the fact that the legal aid is not an authoritative activity. In substantive sense it cannot by itself restore or protect or defend the rights, freedoms and legitimate interests, or even recognize the rights, freedoms and legitimate interests as violated (the recognition, protection, defense and recovery are the prerogative of the authorities and institutions with relevant public authoritative executive powers). Legal aid just (and this is its most important role) calls, initiates the process of rights recognition, restoration, protection and defense.

If on the individual level the legal aid has constant compensatory function which brings sense and purpose, then on the social level of legal aid function it always has variable, probable

but not ever-present in every case of legal aiding. Variable, probable functions of legal aid in individual problem legal situation may not be realized, but their feasibility in principle is the most important and valuable for public interest.

Resume

Thus, the system of legal aid functions can be represented as follows in the author's opinion.

On the individual level there are:

a) the constant function, which content was described above, is a compensatory function.

b) the variable functions, such as

- function of *initiation* of legal activity of the other subjects of law (except for recipient of legal aid);
- function of *suppression* of legal activity of the other subjects of law;
- function of *influencing* on other subjects of law legal activity;
- function of *increasing the level of legal consciousness* of the recipient of legal aid.

The following functions of legal aid could be performed (on individual level) based on the focus of specific problem legal situation and depending on various goals to change it:

- the law-enforcement function aims to prevent the violation of rights, freedoms, legitimate interests of the legal aid recipient;
- the function of rights protection aims to remove the obstacles to realization of rights, freedoms, legitimate interests of the legal aid recipient;
- the function of rights restoration aims to return to initial state and if this is not possible to repair a damage caused by the violation of rights, freedoms, legitimate interests of the legal aid recipient;
- preventive (cautionary) function aims to determine and eliminate the causes

and conditions under which the rights, freedoms and legitimate interests of the legal aid recipient may suffer.

Legal aid functions realizing on social (public) level, as it was mentioned before, describe the purpose and role of legal aid not yet for the recipient, but for the society and the state. It is significant to note that the legal aid to specific recipient on social level does not benefit solely this recipient, but also the society and the state because it is the factor contributory to the reinforcement of rights ensuring, to the improvement of the legal framework on all levels of public authority. In other words, legal aid can help many by helping the one.

If the legal aid functions performed on the individual level represent more of the influence *processes themselves* (applying efforts to pursue the recipients interests) in relation to different

activities on protection, defense, restoration, recognition and other forms of ensuring of the rights, freedoms and legitimate interests in all kinds of forms (enforcement, lawmaking, law interpretation etc), then legal aid functions performed on social level are bounded more with the outcome of such influence, when as the result of the initiative and (or) with the involvement of legal aid being an activity in which bodies, organizations and individuals adopt and enforce appropriate legal solutions, which are the actual measures of recognition, restoration, protection, defense of rights and freedoms, prevention of their violation (in substantive sense).

On social (public) level legal aid performs variable in their nature functions: law enforcement, rights protection, preventive and the function of participation in the forming of the legal practice.

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Юридическая помощь как форма юридического содействия реализации прав личности: функциональный аспект

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В статье раскрываются основные направления воздействия юридической помощи на иные правовые явления, отражающие ее роль в механизме обеспечения права. Автор выделяет постоянную и переменные функции юридической помощи, аргументирует необходимость рассмотрения функций юридической помощи на индивидуальном и социальном уровнях.

Ключевые слова: юридическая помощь, функции права, правовая деятельность, обеспечение права.
