

УДК 364-787.82

Normative Legal Regulation of the Right to Free Legal Aid: Federal and Regional Levels

Andrey A. Kondrashev*
*Siberian Federal University
79 Svobodny, Krasnoyarsk, 660041 Russia*

Received 07.10.2013, received in revised form 23.10.2013, accepted 22.11.2013

Issues of the legislative regulation of free legal aid provision in Russia at federal and regional levels are considered in the article. Particular trends are revealed within the regulation of issues of free legal aid provision in subjects of the Russian Federation. The conclusion was drawn up about a necessity of a detailed regulation in a subject's laws, an inadmissibility of duplication of federal legislation and a possibility of a reference regulation if it is needed.

Keywords: free legal aid, constitutional right to competent legal assistance.

The article is written with financial support of Russian Foundation for Humanities, project № 13-13-24005.

Constitutional right of each person (irrespective of the Russian Federation citizenship) to competent legal aid is stated in the article 48 of Constitution of the Russian Federation. Analysis of provisions of the article 48 of the Russian Federation's Constitution allows saying that it states constitutional-procedural right-guarantee that is complex by its nature. At least, it includes further concrete entitlements: 1) to competent legal assistance; 2) to free legal aid in cases provided by law (part 1 article 48 of the Russian Federation Constitution); 3) the right to counsel (defence attorney) for each detained, taken into custody or charged with a crime person from the moment of detention, taking into custody or indictment (part 2 article 48 of the Russian Federation's Constitution).

The Constitution of 1993 and international law acts make provision for complex, organizational and financial guarantees for free legal aid to low-income groups of society. As follows from the analysis of the Russian legislation, free legal aid was not of a system nature until the beginning of 2012. Due to an absence of united act in this sphere of legal relationships low-income groups of society often were not able to receive necessary legal assistance on the most important questions for these social groups.

Until the November 15th of 2012, according to Federal law "On advocacy in the Russian Federation" (№ 63, adopted on 31.05.2002), the list of main cases in which legal assistance is provided free of charge existed. Under the article 26 of the Law, legal aid to citizens of

the Russian Federation whose families' average per capita income is lower than a living wage established in region of the Russian Federation in accordance with federal legislation and also to lonely living citizens of the Russian Federation whose income is lower than living wage was provided free of charge only to 4 categories of citizens: 1) plaintiffs – on cases considered by courts on recovery of alimony, indemnity caused by a loss of a breadwinner, mutilation or other injury connected to labour activity; 2) veterans of Great Patriotic War (World War II) – on issues not connected with entrepreneurship; 3) citizens of the Russian Federation – in drawing up applications for award of pensions and benefits; 4) citizens of the Russian Federation suffered from political repressions – on issues related to rehabilitation.

But it should be mentioned that the state guaranteed right to free legal assistance for certain categories of citizens became problematic after adoption of the Law on advocacy. The state delegated this function to advocacy to a considerable degree and not provided it with sufficient material and organizational resources for the accomplishment of the assigned task. The situation is explained by imperfection of the legislation “and by absence of proper mechanism of the realization of the right to free legal aid”¹, including undeveloped mechanism of state co-financing of the payment for civil practice lawyers service and underdevelopment of the state system of aiding low-income citizens. Practice showed that federal and regional legislation created bureaucratic difficulties in getting of free legal aid.

Owing to the initiative the President of the Russian Federation the Federal law “About free legal assistance in the Russian Federation” (on 21.11.2011 № 324) has come into effect. It is noted, according to the provisions of this law, that free legal aid will be administered

mostly on the state basis. In compliance with the article 15 of the Law, members of the state free legal assistance system include: federal executive bodies and its subsidiary agencies; executive bodies of subjects of the Russian Federation and its subsidiary agencies; state non-budgetary funds; state legal offices (legal entities incorporated in the form of public institutions of the Russian Federation subjects). It is specifically stated that advocates and notaries can also take part in providing of a free legal aid to citizens.

Financing of expenditures on creation and functioning of state legal offices and also of expenditures for advocates providing free legal assistance to citizens is fully entrusted to regional budgets (articles 12, 17, 18 of the Law).

The list of categories of citizens that are able to get free legal aid of all kinds within the state system deserves particular notice (there are 11 categories of citizens in all, but earlier there were 4 of them). And this list stated by the federal legislator concerning all subjects of the Russian Federation is exhaustive. Due to this fact it is not possible to speak about an introduction of wide-ranging free legal aid to diverse masses of the population. On the other hand, the last point allows not only federal but also regional authorities to widen this list permanently since there are no limits.

It is worth noting that problems concerning legal aid are being now developed by leading researchers in the area of foreign law. The following scientists are involved in the process as Welsh, L., Cookson, G, Lee, T.L., Regan, F., Dyer, C., Bianchini, K².

It is impossible not to take into consideration following positions in the evaluation of the proposed system. There is an opinion that the emphasis in this legal act is on the development of a system of state legal offices, practically state advocacy. Meanwhile, there are other forms of the

competent legal aid, for instance, by advocates whose services are paid by the state³.

As for the regional aspect in the normative regulation of an order of free legal aid provision, it is possible to mention several trends.

1. **Absence of the legislative control in subjects adequate to provisions of the Federal law.** Many subjects of the Russian Federation still have no adopted regional laws for the development of the free legal aid system. Or, for example, the regional law adopted before the Federal law № 324-FZ came into effect is still in force and virtually is in contradiction with it⁴, like in Krasnoyarsk region. Or there are only by-laws determining the procedure of compensation for advocates who provide free legal assistance in accordance with the Federal law № 324 provisions, like in Tyumen' region⁵.

2. **Circle of subjects providing free legal aid.** Number of regions (for instance, Penza region⁶) stated in their legal acts that free legal aid on the territory of these regions is provided only by state bodies and agencies and also by state legal offices. In other regions provision of free legal aid by advocates is allowed along with the creation of state legal offices in the form of public institutions (for example, in Kaliningrad region⁷ and in Karachaevo-Cherkesiya⁸).

3. **Broadening circle of subjects (persons) getting free legal aid.** Number of federal subjects (and they are obviously in minority) widen the list of subjects (citizens) able to receive free legal assistance by an adoption of their laws. Additional categories of citizens entitle to get free legal aid, except named in federal laws, are stated in laws of Samara (article 7 of the Law № 51-GD⁹), Nizhny Novgorod regions¹⁰ (part 2 of the article 14 of the Law "On free legal aid in Nizhny Novgorod region") and also Khanty-Mansi Autonomous Area¹¹ (article 4 of the Law № 113-OZ). And some regions name a lot of categories of these subjects (for instance, 10 categories in

Khabarovsk region¹²), and others – not more than 2 (Kaliningrad region, Altai Republic¹³).

Most of regions decided not to widen the list of subjects entitled to free legal assistance (Primorskyi region¹⁴, Tatarstan Republic¹⁵, Nenets Autonomous Area¹⁶, et al.).

4. **The adjustment of the "old legislation" to conditions of the new federal legislation by subjects.** Some subjects actually modified their own laws on free legal aid and oriented citizens to provision of this legal assistance only by advocates (Moscow¹⁷). And no additional subjects able to provide free legal aid are mentioned.

5. **Determination of the authorized body in the field of ensuring free legal aid provision.** It is stated by the Law № 324-FZ that determination of the executive state body authorized in the sphere of free legal aid provision (paragraph 2 part 1 article 12) lies in the competence of subject of the Russian Federation. Only by the law of Samara region the regional government is directly appointed authorized executive body in the field of free legal assistance secure. Legislators of the most regions just defined the body that makes this decision. On the basis of concerned laws of the Russian Federation subjects it is possible to notice those who define the executive body authorized in the field of free legal assistance secure: the governor – in Chelyabinsk region, the cabinet of ministers – in Chuvash Republic, the head of Republic – in Karachai-Cherkess, the regional Duma – in Tyumen region and regional governments – in Nizhny Novgorod and Sverdlovsk regions.

6. **Establishment of cases of provision of urgent free legal aid to citizens in difficult life situations in regional legal acts.** The federal legislator entitled citizens in difficult life situations to express free legal aid. However, procedure and regulation of the provision of this aid lies in the competence of state bodies of a subject of the Russian Federation. Understanding of a necessity

of expressing free legal assistance provided to citizens in difficult life situations by the state is important itself. But the mechanism of realization of this right is needed and it should be provided by regions. For instance, in Moscow region the law defined the notion of a case of emergency (urgency) – it is a situation appeared as a result of circumstances (emergency, accident, catastrophe, terroristic act, natural hazard, natural or any other disaster), threatening person's life or health, caused damage to health or considerable damage to property. Also the law gives the definition of a difficult life situation which is understood as a situation that objectively disturbs vital activity of a citizen (disability, inability to self-service due to advanced age, illness, orphanage, neglect, poverty, unemployment, absence of place of residence, conflicts and cruel treatment in family, loneliness and others) which he cannot overcome on his own¹⁸.

7. Statement of special cases of additional provision of free legal aid is a feature of some regions. Thus, for example in Moscow region, special cases of free legal aid provision are: 1) pre-trial (out-of-court) appeal of decisions and actions (omissions) of a body providing government services, a body providing municipal services, official of a body providing governmental or municipal services or a government or a local government employee; 2) protection of consumers in medical service provision; 3) protection and securing of rights and legitimate interests of minor children from large families.

According to the law of Khanty-Mansi Autonomous Area, additional cases of free legal assistance provision are: consideration of the application on admission of a citizen legally incapable, on issues of traditional nature management, land tenure, identification of a national identity of representatives of a smaller peoples entitled to this aid. This purification by legislator is very important and proves again

a necessity of a delegation of some powers to subjects of the Russian Federation that monitor the situation and are able to balance rights of citizens.

8. Procedure determination and labour payment evaluation within a system of free legal aid. Regional governments define procedure and size of remuneration of labour of subjects providing free legal assistance, method of compensation of their charges on provision of this aid in Chelyabinsk, Samara, Nizhny Novgorod, Sverdlovsk regions and Karachai-Cherkess Republic. The Duma is authorized to define the size and procedure of compensation in Tyumen region, the cabinet of ministers – in Chuvash Republic. In Khanty-Mansi Autonomous Area material logistics and financing of free legal aid provision by advocates are more detailed and includes: rental workspace expenses, transport charges for every kind of transport including individual one (except taxi); travel expenses including subsistence and rental expenses. Particular costs for one or another kind of legal services are defined in number of regions. For instance, in Primorye an advice (written or oral) cost varies from 300 to 370 roubles and for drawing up a complaint– from 750 roubles. Representation in court costs 750 roubles. In Saint-Petersburg amount of payment to advocate for an oral advice is 665 roubles (and 1115 – for a written one), writing a writ costs 1595 roubles and writing of an appeal – 2075 roubles¹⁹. The lowest prices for advocate's services are in Moscow²⁰ and in Khabarovsk region²¹: here an legal consultation costs about 200 roubles, writing of a complaint – 550 roubles and one day of a court representation – 1100-1500 roubles.

9. The list of documents required to get help. The right to set their own list of documents necessary to get free legal aid in particular region is delegated to subjects of the Russian Federation. The following list can be regarded as common for

many subjects: an appeal for legal aid, a passport or other identity paper; a document confirming the right of the appellant to legal aid.

There are no additional requirements to documents necessary to get free legal aid in Khanty-Mansi Autonomous Area and in Karachai-Cherkess Republic. The appendix to the law of Chelyabinsk region contains example of appeal for free legal aid. In Chelyabinsk and Nizhny Novgorod regions additional lists of documents for particular categories of citizens are provided. It is necessary to bring additional documents confirming status or state of citizen to get free legal aid in Nizhny Novgorod region.

In conclusion, it should be noted that laws on free legal aid in a subject of Russian Federation will be adopted in the near future in all Russian

regions. In the light of this perspective it is rational to mark some criteria. In our view, regional laws will be convenient in application and understanding if they meet these criteria:

- Absence of the federal legislation duplication, usage of reference rules when necessary but not copying of the federal law;
- Clear procedural regulation, preferably stated in norms of the law (appeal for help, consideration of an application and others);
- Leaving lists (costs of subjects providing free legal aid that are to be compensated) opened for simplification of special cases consideration;
- Determination of bodies responsible for decisions or assignments;
- Laconism, conformity with the federal legislation by the sense, main ideas;
- Minimal usage of by-laws.

¹ Mirzoev. G.B. Access to justice and problems of free legal assistance (Moscow, 2010), 15-25.

² Does tendering create travesties of justice?: Lucy Welsh discusses the government's proposals on legal aid. Welsh, L. , 2013, Criminal Justice Matters 93 (1) , pp. 28-29; Analysing the economic justification for the reforms to social welfare and family law legal aid. Cookson, G., 2013, Journal of Social Welfare and Family Law 35 (1) , pp. 21-41; Legal aid for the disabled in transitional China. Lee, T.L., Regan, F. 2010. International Journal of Human Rights 14 (3) , pp. 319-342; Cuts in legal aid will deter lawyers from taking on complex clinical negligence cases. Dyer, C. 2011. BMJ (Clinical research ed.) 342 , pp. 4053; Legal aid for asylum seekers: Progress and challenges in Italy. Bianchini, K. 2011 Journal of Refugee Studies 24 (2) , art. no. fer003 , p. 390-410.

³ .Mazaev. V.D. *Overall performance of free legal assistance legislative securing in Russia: analytic report* (Institution of Law and Public Policy: Moscow, Aquarel, 2011), 52.

⁴ Law of Krasnoyarsk region № 12-2582 of 26.11.2004 "On free legal assistance provision to citizens of the Russian Federation on the territory of Krasnoyarsk region" ("Vedomosty of superior public authorities of Krasnoyarsk region", № 34, 19.12.2004).

⁵ Governmental regulation of Tyumen region № 1-p of 16.01.2012 "On compensation payment of advocates' expenses for advocates providing free legal assistance to particular categories of citizens of the Russian Federation residing in Tyumen region" ("Tyumen region today", № 11, 25.01.2012).

⁶ Law of Penz region № 2222-ZPO of 10.04.2012 "On implementation of Federal Law "On free legal aid in Russian Federation" on the territory of Penz region" ("Vedomosty of Penz province", № 23, 13.04.2012), 4.

⁷ . Law of Kaliningrad region № 194 of 26.12.2012 "On free legal assistance in Kaliningrad region" ("Kaliningradskaya Pravda", loose leaf "Official Vestnik of Kaliningrad region's government", № 241, 29.12.2012). See also: Governmental regulation of Kaliningrad region № 385 of 06.06.2013 "On measures for free legal assistance provision to citizens on the territory of Kaliningrad region" ("Kaliningradskaya Pravda", loose leaf "Official vestnik of Kaliningrad region's government", № 102, 18.06.2013).

⁸ Law of Karachai-Cherkess Republic № 79-RZ of 15.11.2012 "On some issues of free legal assistance provision in Karachai-Cherkess region" ("Day of Republic", № 243-245 (18666), 01.12.2012).

⁹ Law of Samara region № 51-GD of 13.06.2012 "On free legal assistance in Samara region" ("Commune of Volga", № 206 (28134), 15.06.2012).

¹⁰ Law of Nizhny Novgorod region № 144-Z of 02.11.2012 "On free legal assistance in Nizhny Novgorod region" ("Legal sphere", № 125 (1536), 15.11.2012 (appendix to newspaper "News of Nizhny Novgorod", № 207(5060), 15.11.2012).

¹¹ Law of Khanty-Mansi Autonomous Area – Ugra № 113-oz of 16.12.2011 "On free legal assistance in Khanty-Mansi Autonomous Area - Ugra" (Collection of laws of Khanty-Mansi Autonomous Area - Ugra, 31.12.2011, № 12, part II, vol. 1), 1212.

¹² Law of Khabarovsk region № 327 of 28.11.2012 "On implementation of particular authorities of Khabarovsk region in a sphere of free legal assistance provision to citizens" (Collection of laws of Khabarovsk region, № 12 (125), 31.12.2012, part II, vol. 1).

¹³ Law of Altai Republic № 10-PZ of 26.03.2013 "On free legal assistance to special categories of citizens of the Russian Federation on the territory of Altai Republic" ("Altai's star", № 75, 05.04.2013).

- ¹⁴ Law of Primorskykrai № 31-KZ of 05.05.2012 “On securing of free legal assistance provision of the territory of Primorskykrai” (“Vedomostiof Legislative Assembly of Primorskykrai”, № 12, 10.05.2012).
- ¹⁵ Law of Tatarstan Republic №73-ZRT of 02.11.2012 “On free legal assistance provision to citizens on the territory of Tatarstan republic” (Vedomosti of the State Council of Tatarstan, № 11 (part 1), 2012), 1667.
- ¹⁶ Law of Nenets Autonomous Region № 119-OZ of 29.12.2012 “On free legal assistance on the territory of Nenets Autonomous Region” (Collection of laws of Nenets Autonomous Region, № 45 (part 2), 30.12.2012).
- ¹⁷ Law of the Moscow city № 49 of 04.10.2006 “On free legal assistance provision to citizens of the Russian Federation on the territory of the Moscow city” (Vedomosti of the Moscow city Duma, №10, 09.11.2006), 240.
- ¹⁸ Law of Moscow region N 97/2013-OZ of 27.07.2013 “On free legal assistance provision on the territory of Moscow region” (Weekly news, Moscow area, № 144, 08.08.2013).
- ¹⁹ Law of the Saint Petersburg city N 474-80 of 11.10.2012 “On free legal assistance on the territory of the Saint Petersburg city” (Collection of laws of the Saint Petersburg city, № 31, 22.10.2012).
- ²⁰ . Governmental regulation of the Moscow city N 1040-PP of 04.12.2007 (am. of 24.02.2009) “On free legal assistance provision to citizens of the Russian Federation on the territory of the Moscow city” (together with “Order of compensation payment of advocates’ expenses that provide free legal assistance in accordance with Law of the Moscow city №49 of 04.10.2006 “On free legal assistance provision to citizens of the Russian Federation on the territory of the Moscow city”) (Vestnik of Mayor and government of the Moscow city, № 1, 09.01.2008).
- ²¹ Governmental regulation of Khabarovsk region N 118-PR of 20.05.2013 “On regulation of particular aspects in the sphere of free legal assistance provision on the territory of Khabarovsk region” (together with “Order of free legal assistance provision decision making in extreme situations to citizens of the Russian Federation that are in difficult life situation”, “Order of interaction of participants of the state system of free legal assistance in Khabarovsk Krai, and presentation of annual report on free legal assistance provision by advocates by Advocacy chamber of Khabarovsk krai”, Order and wages of advocate, providing of free legal assistance to citizens of Russian Federation in the scope of state system of free legal assistance in Khabarovsk region, and compensation of their expenses of provision of such assistance”) (Collection of laws of Khabarovsk region, № 5 (part 2), 12.06.2013).

Нормативно-правовое регулирование права на оказание бесплатной юридической помощи: федеральный и региональный уровни

А.А. Кондрашев

*Сибирский федеральный университет
Россия 660041, Красноярск, пр. Свободный, 79*

В статье рассмотрены проблемы законодательного регулирования оказания бесплатной юридической помощи в России на федеральном и региональном уровнях. Выявлены определенные тенденции в рамках нормирования вопросов оказания юридической помощи в субъектах РФ, сделан вывод о необходимости детального регулирования в нормах закона субъекта, недопустимости дублирования норм федерального законодательства и возможности отсылочного регулирования в случаях, когда это необходимо.

Ключевые слова: бесплатная юридическая помощь, конституционное право на квалифицированную юридическую помощь.

Статья подготовлена при финансовой поддержке Российского гуманитарного научного фонда, проект № 13-13-24005.
