
СУДОУСТРІЙ; ПРОКУРАТУРА ТА АДВОКАТУРА

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FEATURES OF THE FREE LEGAL AID SYSTEM IN UKRAINE AND THE EUROPEAN UNION COUNTRIES

The article is devoted to the study of the peculiarities of providing free legal aid in Ukraine and the European Union Countries. The article reveals the evolution of theoretical ideas about the essence of free legal aid, ensuring the human right to free legal aid, reveals the role and place of free legal aid in the mechanism of protection of human and civil rights and freedoms, the principles of its provision in Ukraine and the European Union; the subjects of free legal aid and their legal services in the mechanism of ensuring human and civil rights and freedoms are analyzed; describes the legal status of the category of citizens who has the right to receive free legal aid to Ukraine, as well as the peculiarities of its provision in the European Union and who, as a rule, apply for such assistance to local centers for free secondary legal aid; international legal standards, experience of socially effective and high-quality free legal aid are compared with the system of free legal aid in Ukraine. The article proves that the state policy in the field of free legal aid is based on the relevant principles, namely: the rule of law; legality; availability of free legal aid; ensuring the quality of free legal aid; guaranteed state funding. Particular attention in the article is paid to clarifying the activities of the subjects of free legal aid in Ukraine and the categories of persons entitled to receive free primary and secondary legal aid. The article analyzes the features of the Law of Ukraine "On Free Legal Aid" in comparison with the legislation and practice of the European Court of Human Rights in recent years, UN documents, the conclusions of the Venice Commission. An approach is proposed according to which the subjective right to free legal aid includes a positive obligation of the state to provide it, which gives the state a sufficiently wide discretion to control the quality of such assistance. This, in turn, can pose certain threats to the advocacy independence. In addition, a large part of the population, and especially its vulnerable groups, still have a low level of legal awareness about solving their problems in a legal way, which stimulates corruption, inhibits the active participation of this part of citizens in economic life, provokes and supports poverty.

Key words: free legal aid, legal aid, legal support, realization of the right to assistance, advocacy institute, EU lawyer.

Formulation of the problem. Ensuring human rights and freedoms through access and the possibility of exercising the right of a citizen to free legal aid is today the defining criterion that characterizes the level of democratization of the state and soci-

ety as a whole. Due to the European integration sentiments of modern Ukraine, scientific interest in this topic is caused by the urgent need for in-depth study of European law, convergence of national and European legal systems, improving oppor-

tunities for close cooperation between Ukraine and the European Union. Analysis of the experience of foreign countries in the field of advocacy and legal aid provides opportunities to identify certain features of the functioning of these institutions in Europe, to assess areas and trends in their development, which are not typical for the Ukrainian advocacy, to identify advantages and disadvantages experience in this field in Ukraine.

The scientific interest is caused by the urgent need for in-depth study of the issues of adaptation of foreign experience in providing free legal aid in the countries of the European Union to the Ukrainian realities.

Analysis of recent research and publications. The following domestic scholars dealt with the issues of providing legal assistance in criminal proceedings: Alpert S.A., Bazhanov M.I., Biryukova A.M., Varfolomeeva T.V., Drozdov O.M., Zelenetsky V.S., Kaplina O.B., Korcheva T.V., Kuchevsky P.V., Leonenko V.V., Omelchenko T.V., Panchuk O.V., Pogoretsky M.A., Polyansky M.M., Popeliushko V.O., Tytarenko V.V., Trofimenko V.M., Changuli G.I., Shibik V.P., Janowska O.G. and others. Despite the prevalence of discussions on this issue, some aspects of the provision of free legal aid have not been explored.

The aim of the article is a comprehensive analysis of the institute of free legal aid in Ukraine and the European Union, identification of existing shortcomings in the functioning of this institute in Ukraine, study the possibilities of applying the best examples of best practices of progressive countries in Ukraine.

Presenting main material. The right to free legal aid guaranteed by Article 59 of the Constitution of Ukraine in the context of promoting the wide access of every citizen to justice and ensuring effective protection of human rights has long required state support and final implementation.

Due to the inconsistency of the provision of free legal aid in Ukraine with world and European standards, on June 9, 2006 the President of Ukraine approved the Concept of formation of the system of free legal aid in Ukraine. The task of this Concept was to create a system that can provide real and effective access to free legal aid.

The next step, and in fact the starting point for the creation of a system of free legal aid in Ukraine was the adoption on June 2, 2011 by the Verkhovna Rada of Ukraine of the Law of Ukraine "On Free Legal Aid", according to which every citizen, including foreigners and stateless persons, is guaranteed for free legal aid.

According to this Law, free legal aid is "legal aid guaranteed by the state and fully or partially provided at the expense of the State Budget of Ukraine, local budgets and other sources" [2].

In the context of Part 2 of Article 59 of the Constitution of Ukraine [5], guaranteeing everyone the right to legal aid is not only a constitutional and legal obligation of the state, but also a confirmation of Ukraine's compliance with international legal obligations under the Universal Declaration of Rights. 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1966, and others.

The Law of Ukraine "On Free Legal Aid" provides for two types of such assistance: primary and secondary.

The essence of primary legal aid includes the provision of consultations and preparation of applications and complaints for a person, except for procedural ones (those addressed to the court) (Article 7).

Secondary legal aid consists in drawing up documents of procedural character, realization of representation of interests in courts, other state bodies, local governments before other persons; defense against prosecution (Article 13).

On June 6, 2012, the Cabinet of Ministers of Ukraine adopted the Resolution "On the Establishment of the Coordination Center for Legal Aid and Liquidation of the Center for Legal Reform and Draft Law at the Ministry of Justice", which provided for the establishment of the Coordination Center for Legal Aid and approves its Regulations.

On July 2, 2012, the Ministry of Justice of Ukraine issued Order № 968/5 "On Establishment of Centers for Free Secondary Legal Aid", according to which existing Centers were established at the main departments of justice in the Autonomous Republic of Crimea, oblasts, Kyiv and Sevastopol. Today, the Centers for Free Secondary Legal Aid operate in all regional centers of Ukraine under the main departments of justice.

The main task of such centers is to ensure the right of citizens to protection from prosecution in criminal proceedings, including the representation of the interests of individuals during both criminal and administrative detention.

From July 1, 2015, in addition to legal aid centers in regional centers, about 100 inter-district legal aid centers began to operate. They provide legal assistance to low-income citizens in civil or administrative cases.

The state mechanism of the free legal aid system in Ukraine is based on such key principles as the rule of law, legality, availability of free legal aid, quality assurance of free legal aid and guaranteed state funding.

The legal systems of the European Union provide a number of mechanisms for providing free legal aid.

In many countries, legal aid law describes free legal aid services provided to detainees, suspects, accused and defendants in criminal proceedings, and legal aid in other categories of cases (for example, the United Kingdom and Slovenia). In some countries, such as Slovenia, legal aid schemes in criminal cases and aid in other categories of cases are established by separate sets of legislation.

The experience of the United Kingdom is also noteworthy, where partial free assistance for a certain group of low-income people is also practiced. That is, if the person applying for legal aid has funds, according to the decision of the commission on additional appropriations of the Ministry of Social Security or the court, the decision to provide appropriate legal aid is issued after the applicant has paid a certain amount. Given the large number of appeals to local centers for free secondary legal aid to provide legal assistance to protect illegal rights or claims, such a rule may provide some responsibility for the client's claims and the number of lawsuits. A similar rule exists in the legislation of other countries. The bottom line is that when citizens apply for free legal aid, they are required to provide proof of their poverty, and depending on the level of income, legal aid is provided either free of charge or through co-financing of 20%, 40%, 70% or 100%. In the Netherlands, the activities of private lawyers are complemented by a strong advisory sector, such as voluntary, so-called "legal shops", legal aid offices and legal aid centers. Legal aid offices provide priority legal assistance, advice on social security, housing, employment, immigration and consumer protection; refer principals to private lawyers, providing certificates entitling to subsidized legal aid to persons who has applied to private lawyers. Such Offices are funded by the Ministry of Justice of the Netherlands and employ law graduates. In the case of automatic appointment of a lawyer, payment for his services is made by the judicial authorities. People who have an income exceeding the established level are not entitled to apply for financial support from the state and pay for services at their own expense. They can use the institution of legal aid insurance.

According to independent international experts, the legal aid system in Ukraine has taken important steps to raise awareness of the right to legal aid. According to the evaluation, Ukrainian legislation and bylaws meet the standards of the European Convention on Human Rights regarding the choice of a lawyer. In Europe, too, more and more attention is being paid to ensuring the proper quality of legal aid. In Ukraine, there is an appropriate regulatory framework for criminal proceedings. However, it is recommended to strengthen the quality control mechanisms, in particular, by expanding the norms that establish the quality standards of legal aid in civil and administrative cases.

Obviously, without ensuring the right to legal aid in the context of continuous legislative reform, it is hardly possible to effectively protect all other human rights and freedoms. And in this context it should be noted that the right to legal aid has a dual nature: on the one hand, it exists as a subjective private human right, and on the other – it is the most important guarantee of protection of all other rights and freedoms [6, p. 8]. The mechanism of constitutional guarantee of the right to legal aid should be considered as an element and a specific specification of the mechanism of legal regulation of the realization of fundamental human rights and freedoms.

Conclusions and suggestions. Implementation of the strategy of improving the system of free legal aid in Ukraine, in our opinion, requires a number of measures, including: expanding access of citizens to quality free primary and secondary legal aid in accordance with the existing needs throughout Ukraine; creation and functioning of new points of access to free legal aid; expansion of the list of people who will have the right to receive it; formation of a flexible system of free legal aid that promptly responds to the legal needs of the community; increasing the level of legal capacity of territorial communities and the legal consciousness of citizens, reducing the level of corruption at the household level; development of a network of independent free legal aid providers that will actively interact with each other on the basis of partnership and free competition; creation of an effective system of professional development, generalization and dissemination of best practices and ensuring the exchange of experience for employees of the free legal aid system, prosecutors, law enforcement agencies, courts, lawyers, NGOs, volunteer movements, etc. At the same time, it is necessary to improve the current legislation in the field of free legal aid in terms of formulating the responsibilities of the subjects

of the right to free secondary legal aid and consideration of the conceptual possibility of co-financing, taking into account the financial situation, clients of legal aid services.

Thus, the existence of a free legal aid system in Ukraine is undeniable, but much remains to be done to ensure that Ukraine reaches the level of world standards of social, legal and democratic life that will enable it to feel equal among other rule of law states.

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Леган І. М., Бондаренко К. С. Особливості системи безоплатної правової допомоги в Україні та країнах Європейського Союзу

Стаття присвячена дослідженню особливостей надання безоплатної правової допомоги в Україні та країнах Європейського Союзу. У статті розкрито еволюцію теоретичних уявлень сутності безоплатної правової допомоги, забезпечення права людини на безоплатну правову допомогу, розкрито роль та місце безоплатної правової допомоги в механізмі захисту прав і свобод людини і громадянина, принципи її надання в Україні та країнах Європейського Союзу; проаналізовано суб'єкти надання безоплатної правової допомоги та їх правові послуги в механізмі забезпечення прав і свобод людини і громадянина; охарактеризовано правовий статус категорії громадян, які мають право отримати безоплатну правову допомогу Україні, а також особливості її надання в країнах Європейського Союзу і які, як правило, звертаються за такою допомогою до місцевих центрів із надання безоплатної вторинної правової допомоги; зіставлено міжнародно-правові стандарти, досвід соціально ефективного та якісного надання безоплатної правової допомоги із системою надання безоплатної правової допомоги в Україні. У статті доведено, що державна політика у сфері надання безоплатної правової допомоги ґрунтується на відповідних принципах, а саме: верховенства права; законності; доступності безоплатної правової допомоги; забезпечення якості безоплатної правової допомоги; гарантованого державного фінансування. Особливу увагу у статті приділено з'ясуванню діяльності суб'єктів надання безоплатної правової допомоги в Україні та категорії осіб, які мають право отримати безоплатну первинну та вторинну правову допомогу. У статті проаналізовано особливості Закону України «Про безоплатну правову допомогу» у співставленні із законодавством та практикою Європейського суду із прав людини останніх років, документами ООН, висновками Венеціанської Комісії. Запропоновано підхід, згідно з яким суб'єктивне право на безоплатну правову допомогу включає позитивний обов'язок держави з її забезпечення, що надає державі достатньо широкі дискреційні повноваження щодо контролю за якістю такої допомоги. Це, у свою чергу, може створювати певні загрози для незалежності адвокатури.

Ключові слова: безоплатна правова допомога, юридична допомога, правовий супровід, реалізація права на допомогу, інститут адвокатури, адвокат ЄС.