

Problematic Issues of Ensuring Human Rights Protection and Specifically at the Municipal Level and Solution Approaches

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Abstract: In the scientific study, researchers disclose problematic issues of modern advocacy, legal regulation of high-quality ensuring human rights protection in the Russian Federation and specifically at the municipal level. The problems of legislation improvement in the specified field are also considered in the study. Researchers point that system regulating of rendering of the qualified legal assistance and reforming in the sphere of rendering a legal assistance to citizens are necessary conditions. During the research researchers come to conclusion: it is essential to modernize the form of advocacy organization in Russian Federation in order to increase efficiency of human and civil rights protection mechanisms, the status of lawyers in professional legal community by creation of the mechanism of regular professional improvement and proficiency testing and also implementation of very effective mechanism which is an expulsion from a profession. Specific proposals which are directed to permission of problematic issues of activity of advocacy institute in the Russian Federation are presented in this article and also aimed at ensuring human and civil rights protection.

Key words: Human rights protection, advocacy, body of local self-government, regulation, modernize

INTRODUCTION

According to the Article 2 of the constitution of the Russian Federation, man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the state. The right in the qualified legal assistance is one of the most important components of the constitutional law. Therefore, this subject is actual and is constantly the focus of attention of legislative, executive power and also all legal community.

Characteristic feature and feature of the constitutional right in receiving aid and advice in legal matters is its use for realization and protection of the rights and freedoms of man and citizen. In the Constitution of the Russian Federation one right can not be carried out without a right irreceiving of the qualified legal assistance which is legal guarantee of rights and freedoms. The point of local self-government in all the territory of the Russian Federation is in his orientation on realization of citizens interests (Moskvina, 2015).

Guarantees are conditions and ways of their realization; they give an opportunity for transition from a possibility to reality. Thus, to guarantee the rights and freedoms means, not only to possess and have these rights but also to be under protection (Maslova and Maryasheva, 2015).

According to part 1, Article 48 of the constitution of the Russian Federation everyone shall be guaranteed the right to qualified legal assistance. In cases envisaged by law the legal assistance shall be free. Unfortunately, the citizens who are in need of legal assistance are becoming more and more. It requires knowledge of the law to seize the court with the purpose of claim right. At emergence of circumstances, without owning legal knowledge, a person has great difficulty and sometimes it is almost impossible to solve a problem and to protect his rights. Therefore, the person needs the help of the qualified specialist who is capable to solve his problem. So, each organization granting legal assistance should carry out its duties from good faith because its qualified persons are responsible for realization and protection of the rights of man and citizen. The case, if a citizen can resolve his difficult situation, depends on their competence, professional manner, sense of urgency and literacy.

But having higher legal education, law practice and passing certain courses will not be a guarantee of receiving the qualified legal assistance. According to A.A. Voronov though a final law qualification certificate is also obligatory for people who provide legal services but it is not a guarantee of rendering the qualified help (Voronov, 2006).

In this regard, the state needs to develop a number of requirements which will allow to estimate quality of granting the qualified legal assistance and to control

quality of providing service. One of the famous Russian lawyers G.M. Reznik notes that the help is considered qualified, given by the persons who have not only legal education but meet professional and ethical standards. He claims that without them the help can't be qualified.

In the Russian Federation adoption of the Federal law 11/21/2011 No. 324-FL "about the qualified legal assistance in the Russian Federation" has become an important stage. This law regulates the right of citizens for a legal assistance, at the same time the citizen himself chooses whom he will ask for the help. It is quite good when a person has a choice when he decides himself the person he resorts to but only if this help is really qualified and professional. And this help is possible only at appropriate execution and guaranteeing.

According to V.V. Konin, availability of the right to defense is provided and guaranteed by the state. It is a legal right of the natural person, a component of the right to receive the qualified legal assistance and is guaranteed not only by the domestic legislation but also by international law (the universal declaration of human rights, 12/10/1948, the convention for protection of human rights and fundamental freedoms, 11/4/1950). Not only the principles and rules of rendering the qualified legal assistance but also the quality standards of this help are recognized in norms of international law (Konin, 2013).

It is necessary to remember that the legal assistance is given qualitatively and competently, only when the law and professional ethics are not offended and only then protection of the rights of citizens will be provided the most qualitatively (Burdo and Smirnova, 2013).

We should agree with V.F. Yakovlev who speaks: "quality of justice depends on quality of work of lawyers a lot. Quality of justice isn't created only by one judge. This is incorrect understanding. Business should be prepared outside court session".

Nowadays representatives in a court have no reason to be competent professionals who are knowledgeable in substantive law and in process. The process itself despite all potential of rigidity put in standards of procedural codes is too soft, indulgent to nonprofessionals. The existing procedural legislation, first of all Arbitral Procedural Code of the Russian Federation, contains a number of norms in consecutive stages which put a nonprofessional into a very unpleasant situation in process. Like for example the requirement of preliminary disclosure of circumstances and prohibition on referring to the circumstances which aren't presented into the court beforehand (p. 3 and 4, Article 65, the Arbitral Procedural Code of the Russian Federation); the standard p. 3.1, Article 70, the Arbitral Procedural Code, 2010, the relief of proving circumstances acknowledged by parties; the

limits for the examination of a case by an arbitration court of the appeals instance (p. 2, Article 268, the Arbitration procedural code of the Russian Federation) and some other. However courts are not rigid for the parties trying to circumvent these regulations.

Insufficient stability of judicial practice, liberal share of judicial discretion which is constantly causing the desire of participants to make an experiment in hope that this or that approach under the conditions of practice equivocation will work and give a result, raises load of judicial system. The incompetent representatives have to be forced out from courts because of their incapability to carry a case that inevitably leads to refusal of principals of their services. It will do good for courts if the number of unskilled representatives becomes less and from this fact these mentioned measures will lead to reduction of number of disputes.

Thus, the importance of closing an access to court for pseudo-lawyers, unfair, incompetent representatives of citizens is obvious today.

Representatives without any restrictions including obligatory requirement to existence of the higher legal education, any requirements about the qualified legal assistance to them are allowed to admit the court.

For this reason the existing forms of the advocacy organization should be reformed. In this regard, the subject of the real research is very actual and has not only theoretical but also practical value.

MATERIALS AND METHODS

In the course of writing of scholarly work the following methods of scientific knowledge have been applied: a method of the scientific analysis (the analysis of theoretical sources), a synthesis method, a system and structural method, a method of generalization of the received materials on the studied subject and also comparative, legal methods.

Use of set of the specified methods has allowed to reveal the main problems in the considered subject and to offer concrete ways for their elimination.

RESULTS

At the heart of effective economy of the modern state an innovative way of development, creation of attractive investment climate to a large extent depends also on competent legal policy. The government of the Russian Federation has approved new edition of a state program "Justice" aiming at reforming the Russian market of legal services. The specified government program "Justice" as one of the directions of legal profession development in

the country assumes a segue to so-called “advocatory monopoly” in all trials (now exclusive access to representation by the licensed lawyers is fixed only in criminal trial).

The main points of the government program “Justice” are the following: regulating the system of rendering the qualified legal assistance and reforming of legal profession institute; increase of the status of lawyers in professional legal community by creation of the mechanism of regular professional improvement and proficiency testing and also introduction of the effective mechanism of an exception from a profession; development and maintenance of the competition in the market of professional legal services by restriction of access to the market for unfair participants; ensuring of rendering a legal assistance with lawyers including free legal assistance; improvement of quality of relationship of the state and society by expansion of opportunities of obtaining information about notaries by citizens; increase of availability of notarial services and quality of perfect notarial actions by notaries and officials of local government; improvement of an order of providing the state services in the sphere of the state civil registration as the most demanded (mass) and priority; implementation of transition to providing the state services in the sphere of registration of non-profit organizations in electronic form (including with use of the federal state information system “integrated portal for state and municipal services (functions)”).

The world becomes globalized, the international competition becomes strained and the right to taking the worthy place at home (in the country) and in the international market of legal services will be gained only by lawyers of countries with strong national competition and prompt reaction of legislator.

The development level of legal profession is an indicator of a condition of the effective civilized state. The right to fair judicial proceedings and the qualified legal assistance of the lawyer is a part of the fundamental rights and freedoms of man which are affirmed in the international conventions and declarations and in the constitution of the Russian Federation. Considering the state importance of legal profession for observance of the constitutional and other rights, it is obvious that it is the activity which is legislatively regulated by the state; the state (legislator) creates and regulates the general conditions of fulfilment of this activity. The professional qualified legal assistance to the population also can not exist without solution of organizational and legal opportunities of legal profession. The legal profession has to set an example of civil society with democratic principles of management, carrying out the main mission

protection of the rights and freedoms of man. However, the legal profession has to be organized within professional self-government and the self-control and to be absolutely independent of any bodies of the public (state) power. The lawyer in point of fact of competitive process, is a necessary participant of legal proceedings, a courageous and professional opponent to violators of the rights and freedoms of man as a rule, being in power. He is the last hope of people at struggle with abuse of power and corruption for the rights. Having courage to professionally protect others, he should be also courageous enough in recognition of mistakes and defects of the profession.

Thus, it is necessary to order the system of rendering a legal assistance and to reform legal profession. The market of legal services is planned to be cleared out of unfair participants.

The point of reforming of legal profession institute has to be in increasing of responsibility and competence of lawyers in exchange for granting the guaranteed economically attractive part of the market of legal services to them. Transition to the united lawyer status for all who are engaged in legal counseling, also transition to lawyer monopoly for representation of interests in court seem reasonable. The lawyer monopoly will allow only true professionals to protect the interests of citizens.

Among the main points of development of legal profession institute the most important are improvement of the mechanism of the admission in a profession; development of system of lawyers specialization in various branches of the right and types of legal proceedings; development of business legal profession; improvement of the mechanism of quality control of a legal aid, including by means of development of united standards of rendering the qualified legal assistance.

DISCUSSION

The idea to transfer the functions of legal representation of legal corporation is right in itself. This model takes place almost in all countries with the developed legal system. It guarantees the qualified judicial representation and therefore, provides the high level of right application. But it is an ideal. In reality the monopoly will inevitably lead to increase of lawyer services cost (while the mechanism of control of their services quality is not offered). In that case the cost of judicial representation can be ultra-boundary for citizens and small business (we will consider possibilities of delaying of process, access to the place of trial, etc.). As a result some category of people owing to financial factors will be actually deprived of a constitutional right of judicial protection.

Moreover, before introducing lawyer monopoly, it is necessary to change the system of lawyers training. Referring to the example such countries as England and Germany: in these countries in addition to examinations (by the way, rather severe) before getting the admission to practice, the lawyer has to pass formal training, i.e., get real experience under control of more skilled companions on legal corporation. Practically, it is an internship but not in a medical and in legal profession. Afterwards we have quite ready professional having a stock not only book, but also practical skills. It is obvious that it does not only increase "quality" of the lawyer but also leads to elimination of random people. People who have got the admission to practice are almost the elite which have paid not less than six years of active and young (as a rule) life to get this status. Now we do not have such system in our country. Only at her emergence it should be spoken about introduction of lawyer monopoly.

The problem of uniting of a legal profession has been already discussed both by the Ministry of Justice of the Russian Federation and by lawyer community for a long time. Realization of the state program "Justice" for 2013 and on planning period of 2014 and 2015 which is defined by the government executive order of the Russian Federation in August 16, 2013 No. 1453-р is the core point of discussion.

According to this order implementation of the sub-programme is intended for the period till 2020 and provides two stages:

The 2013-2015 improvement of the legislation of the Russian Federation on legal profession in particular by September 30, 2014 it is supposed to develop and confirm the concept of market regulation of a professional legal assistance aimed at ensuring the access of citizens and legal entities to receiving the qualified legal assistance and by December 31, 2015 it is planned to introduce the draft federal law on a professional legal assistance in the Russian Federation directed to optimization of procedure of the admission to a profession of the lawyer and market standardization of a professional legal assistance by the ministry of justice of the Russian Federation into the government of the Russian Federation.

The 2015-2020 finality of planned and program actions by main areas of activity of the sub-programme, carrying out monitoring of implementation of the sub-programme and formal expert examination of the received results. At last, the ministry of justice of the Russian Federation has agreed that this association has to happen on the basis of united lawyer corporation. It is necessary now to close an access to court for pseudo-lawyers, unfair, illiterate representatives of citizens. Representatives without any restrictions

including without obligatory requirement to existence of the higher legal education, besides no requirements of the qualified legal assistance are allowed in court.

The federal chamber of lawyers of the Russian Federation until the end of 2015 has presented to the ministry of justice of the Russian Federation the concept of market regulation of rendering a legal aid which main component has to be participation in courts the people who have certificates of lawyers as judicial representatives.

It is important to note that such reforming has both supporters and opponents. Most of all we observe supporters of this monopoly for rendering a legal aid among lawyers and judges. The "free" lawyers and lawyers who have created limited liability company for consultation and legal service of business are opponents of this reforming. The position of "free" lawyers is clear, they have a legal education, length of service in the profession which provide access to passing of a qualification examination to assignment of the status of the lawyer but besides, having received the status of the lawyer, it will be necessary to observe the legislation on legal profession and the code of professional ethics to bear responsibility for rendering low-quality legal services.

Lawyers of business consultation don't seek to receive the status of the lawyer first of all because they don't accept the existing forms of the organization of lawyer activity. They don't accept also the fact that in lawyer education there is no opportunity to share earned profit to involve work of other lawyers with conditions of salary payment to them, there is no property right of lawyer education and another.

CONCLUSION

Summarizing the abovementioned we come to the following conclusions. The advocacy institute takes the role and place in modern society of the Russian Federation. It is non-state, non-profit organization of the qualified lawyers who have united on a voluntary basis and received the lawyer status for protection of legitimate rights and interests of citizens and legal entities.

The advocacy is an institute of civil society; it means that it is created for people, ensuring protection of their rights and freedoms, rendering a legal assistance to everyone who needs it.

The legal assistance giving to citizens has to be qualified. Otherwise guarantees of realization of constitutional rights and freedoms are only declaratively proclaimed.

The order of realization of the right to protection in criminal proceeding of the Russian Federation is defined rather fully. At the same time, the judicial representation on civil cases allows almost “anyone” to participate in court that it can not be considered as a normal situation.

It is thought that nobody, except law highly-educated people has no right to be engaged in rendering a legal assistance on a professional basis; the lawyers who are engaged in rendering a legal assistance have to act under the federal legislation to conform with the united professional standards and norms of professional ethics, to be a part of one professional community and to carry out decisions of his self-government institutions.

Therefore, the developed concept of regulation of the market of a professional legal assistance is to provide high quality of the legal aid giving to citizens.

It is obvious that reforming of forms of the organization of lawyer activity is necessary all the more so as there are already such lawyer bureaus where one lawyer runs others, signs contracts where under the salary is paid to them. One of examples of possible reorganization of such form of lawyer activity like lawyer bureau is the example of creation of lawyer bureau by the legislation on advocacy of Republic of Belarus (Poletilo, 2014).

According to Article 31, law of Republic of Belarus, 30/12/2011 No. 334-3 “about advocacy and practice of law in Republic of Belarus” the lawyer bureau is the non-profit organization which was created for implementation of activities for rendering a legal assistance. It has been granted the right to employ lawyers, assistants to lawyers and other workers according to the employment contract. The lawyer bureau has no right to be engaged in other kinds of activity, except the organization of rendering a legal assistance and also to act as the founder (participant) of other legal entities or the owner of their property. It is established that the legal assistance is given in lawyer bureau on the basis of the contract for rendering a legal assistance by implementation of lawyer activity by partners and also other lawyers according to the employment contracts signed with lawyer bureau. The contract for rendering a legal assistance is made between lawyer bureau and the client. The lawyer bureau bears responsibility according to the obligations by the property belonging to it if other is not established by acts. At the same time, it is established that partners of lawyer bureau don't answer for its obligations and the lawyer bureau doesn't answer for partners' obligations if other isn't provided by acts. Of no less importance is the fact that the property of lawyer bureau which has remained

after calculations with creditors and partners of lawyer bureau in case of the partner's exit from lawyer bureau or its elimination is distributed between partners in equal shares if other isn't provided by the charter of lawyer bureau. Thus, the offered form of lawyer education is a lawyer bureau; by the advocacy legislation of Republic of Belarus solves many problems which cause objections of entry into the advocacy body of lawyers of business consultation. The specified model of lawyer education also demonstrates possible legislative permission of the creation of some lawyer bureaus activity which has already developed in practice in the Russian Federation.

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