

Free Legal Aid System: Legislation, Practice and Development Prospects

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Abstract: The article emphasizes that issues related to the system of providing free legal aid to the population are an important mechanism in the formation of a legal state and civil society, and analyzes opinions on its legal foundations and forms. Proposals and recommendations on the prospects for the development of this system are also provided.

Keywords: free legal aid, state-funded legal aid, legal clinic, rule of law, civil society, legal culture, legal reforms.

Introduction

In our country, the main international documents on human rights have been ratified, which provide for the creation of effective mechanisms for providing free legal assistance to the population. This system is one of the important indicators of the formation of a legal state and civil society in any democratic state, the main task of which is to ensure the full use of the constitutional rights and freedoms of citizens. Moreover, the guarantee of the right to receive free legal aid by the state serves to ensure not only legal justice, but also social equality in society.

The concept of legal aid

As we express our opinion on the issues of “providing free legal assistance to the population” within the framework of this article, it is important, first of all, to clarify the concept of this term, its differences from the term “providing legal assistance.”

The term “provision of free legal aid” is not included in the dictionaries as a whole. In the “Explanatory Dictionary of the Uzbek Language,”¹ the terms “*bepul*” and “*bepul-bebadal*” are used, which mean “*no money in return, without payment, free*”. From this point of view, it can be understood that if we are talking about the provision of free legal aid, then the assistance provided in this case should be free (i.e., not covered by any source).

Today, even in international documents, the term “provision of free legal aid” is not found in this context.² Developing our thoughts from this point of view, the term free legal aid should mean that legal aid, for example, is provided by a lawyer completely free of charge. However, an advocate carries out their activities by receiving partial or full payment from the state for their services.

¹ O‘zbek tilining izohli lug‘ati. —T.:”O‘zbekiston milliy ensiklopediyasi”, 2008.

² Программы Управления ООН по наркотикам и преступности (УНП ООН) для государств Центральной Азии 2015 - 2021 гг., подпрограммы 2: Уголовное правосудие и предупреждение преступности (<https://www.unodc.org/roca/en/news/unodc-launches-its-2022-2025-programme-for-central-asia-rus.html>)

In many countries, in similar situations, the terms **legal aid** (Australia, Great Britain, Canada) **l'aide juridique** (Canada, France), **asistencia legal** (Argentina, Mexico) are used, which in terms of content means legal assistance. This, in turn, means that the legal aid provided is not free, and the fee is covered by the state.³

F.Otakhonov⁴ supported the opinion of scientists who defined legal assistance as “the active professional assistance provided by lawyers in the formation of the legal culture of individuals, ensuring their rights and freedoms, protecting the rights and legitimate interests of legal entities at risk of violation or violated.”

In our opinion, Uzbekistan has also studied the best practices of foreign countries in this area and adopted the Law “On the provision of legal assistance at the expense of the state.” This Law defines legal aid at the expense of the state as qualified legal aid aimed at protecting the rights, freedoms, and legitimate interests of individuals, provided fully or partially at the expense of the state in accordance with the procedures and conditions established by this Law.

At this point, it is important not to confuse the term “legal assistance” with the term “provision of legal services.” Observations of the norms of current legislation and the practice of its application show that currently, the concepts of legal aid and legal service are not fully disclosed, and it is very difficult to find in the documents the main features that allow distinguishing the above-mentioned terms.

Some authors (T. I. Ilina, A. I. Muranov, D. V. Novak, G. K. Sharov) note that these concepts do not differ from each other. Others, on the contrary, opposed them and tried to justify their position. For example, O. S. Ponasyuk believes that everything that falls within the scope of the legal profession is qualified as “legal assistance”, and everything that does not fall within this sphere is “legal services.”⁵ In our opinion, in this case, the scientist’s views are quite general, and it is noticeable that a clear attitude towards the issue has not been expressed.

Foreign experience

The legal basis for the protection of personal rights and freedoms refers to international and national legal documents reflecting these rights.⁶ The right of a citizen to legal assistance Article 14 (3) (d) of the International Covenant on Civil and Political Rights stipulates⁷ that everyone has the right, on the basis of full equality in the consideration of any charges against him, to trial with his participation and to defense himself or by means of a chosen defense counsel; to be informed of his right to have a defense counsel, if he does not have one; to have a defense counsel appointed to him in any case required by the interests of a just court, and to be guaranteed the free provision of a defense counsel in all cases where he does not have sufficient funds to pay for it.

Similar views can be seen in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950-1955)⁸, adopted within the framework of the Council of Europe.

The Constitution of India specifically provides for the right to receive free legal aid for the purpose of ensuring justice.⁹ According to it, in the Constitution (1949), Art. 39A: “The functioning of the state legal system ensures that it promotes justice on the basis of equal

³ Программы Управления ООН по наркотикам и преступности (УНП ООН) для государств Центральной Азии 2015 - 2021 гг., подпрограммы 2: Уголовное правосудие и предупреждение преступности (<https://www.unodc.org/roca/en/news/unodc-launches-its-2022-2025-programme-for-central-asia-rus.html>)

⁴ Otaxonov F.H..Tadbirkorlar huquqlari va yuridik xizmat.. —Toshkent: “Adolat”, 2018.-31 b.

⁵ G‘ulomova A.S. Advokatlik faoliyatida yuridik yordam ko‘rsatishni tartibga solish xususiyatlari. https://t.me/ares_uz

⁶ G‘afurov A.,Mo‘minov A.,Tillabayev M. Inson huquqlari. O‘quv qo‘llanma.O‘zbekiston Respublikasi Adliya vazirligi huzuridagi Yuristlar malakasini oshirish markazi, 2012.-181 b.

⁷ Fuqaroviylar siyosiy huquqlar to‘g‘risidagi xalqaro pakt (<https://lex.uz/docs/-2640479>)

⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, article 6 (https://www.echr.coe.int/documents/d/echr/convention_ENG)...

⁹ Hindiston, Konstitutsiya (1949), art. 39A. (https://www.constituteproject.org/constitution/India_2012)

opportunities and, in particular, provides free legal assistance through appropriate legislation or schemes or other means, ensuring that no citizen is denied access to justice due to economic or other disabilities.”

A number of UN organizations have recommended the adoption of a law regulating the provision of legal aid at the expense of the state, as well as the appointment of a body responsible for coordinating activities in this area. In the USA, Great Britain, Finland, Canada, France, Germany, Sweden, Georgia, Moldova, Russia, and Tajikistan, the organization of state-funded legal aid is carried out by separate organizations (centers, bureaus, or councils).

Provision of legal aid at state expense

In our country, the legal basis for the provision of legal aid at the expense of the state has been created, in particular, according to Article 29 of the Constitution of the Republic of Uzbekistan, “Everyone is guaranteed the right to qualified legal aid. In cases stipulated by law, legal aid is provided at the expense of the state.” According to Article 141 of this document, “The bar operates to provide qualified legal assistance to individuals and legal entities.”¹⁰

Based on the above constitutional norms, in 2023, the Law¹¹ “On the provision of legal assistance at the expense of the state” was adopted in Uzbekistan. The main goal of the adoption of this law is to create a stable and reliable system for providing legal assistance to individuals at the expense of the state, necessary for the realization and protection of their rights and legitimate interests, guaranteed by the Constitution of the Republic of Uzbekistan and international treaties, ensuring equal access to legal assistance and access to justice.

The Law defines the basic principles of the system, the main directions of state policy in this area, and guarantees of citizens' rights to legal assistance. At the same time, the opportunities for citizens to receive free legal aid have been expanded by including cases of civil, administrative, and administrative offences in the list of cases for which legal assistance is provided.

Provision of free legal aid by non-governmental non-profit organizations

In accordance with the Government Resolution¹² “On measures for further improving the system of communicating legal information and providing legal assistance to the population,” a non-governmental non-profit organization in the form of an institution “Madad” has been created, the main task of which is to provide free primary legal assistance to citizens, where they will have the opportunity to receive consultations and explanations on legal issues directly and online. The organization's activities are not limited to providing legal advice, but are also aimed at increasing the legal knowledge of citizens in harmony with socio-political changes in society and popularizing legal literacy by widely involving volunteers in this process.

Also, “Madad” systematically analyzes the legal requests of the population and, based on their results, develops practical proposals for further improvement of law enforcement practice and the improvement of current legislation. In this process, one of the important tasks of the organization was defined as the introduction of best practices of foreign countries, raising the legal awareness and culture of the population through the use of innovative methods.

In addition, the legal information portal “Advice.uz,” which is maintained by this institution, is regularly updated and serves as an open, reliable, and prompt source of legal information for citizens. The portal has 40 sections related to the legal sphere, which include about 3 thousand content in a number of languages. The number of users of the portal has exceeded 10 million, and the number of daily users is 12 thousand.¹³ Therefore, these tasks of the NGO “Madad” play

¹⁰ O‘zbekiston Respublikasi Konstitutsiyasi// <https://lex.uz/docs/6445145>

¹¹ O‘zbekiston Respublikasining “Davlat hisobidan yuridik yordam ko‘rsatish to‘g‘risida”gi qonuni // <https://lex.uz/docs/6502543>

¹² O‘zbekiston Respublikasi Vazirlar Mahkamasining qarori, <https://lex.uz/docs/4500969>

¹³ Fuqarolar bepul yuridik yordam olishi mumkinmi? //<http://e-maslaxat.uz/uz/news/1959>

a special role in the further development of the system of providing free legal assistance to the population in the country, strengthening the rule of law and civil society.

From July 1, 2024, a new procedure for providing free primary legal aid to citizens has been introduced as an additional area of activity of justice bodies. This procedure is defined by the Decree¹⁴ of the President of the Republic of Uzbekistan dated May 24, 2024, No. DP-80 is an important step towards strengthening the rule of law and civil society. In accordance with the decree, as a result of the measures currently being implemented by the Ministry of Justice, legal advisory bureaus of the institution have been established in all district (city) public service centers of the republic in cooperation with the non-governmental non-profit organization "Madad."

It is noteworthy that free legal consultations are provided to the population through consulting bureaus, as well as assistance in preparing the necessary procedural documents for pre-trial and judicial settlement of disputes. This, in turn, will strengthen citizens' confidence in a fair trial, increase their legal culture, and further expand their opportunities for effective protection of their rights.

According to the Law¹⁵ "On Advocacy," a lawyer selected to provide legal assistance at the expense of the state is not entitled to refuse to provide legal assistance to a citizen on the grounds of his insolvency. Payment for legal aid provided to a lawyer who has provided legal aid at the expense of the state in the manner prescribed by the Law of the Republic of Uzbekistan "on the provision of legal aid at the expense of the state" is carried out in the manner and amounts established by the Cabinet of Ministers of the Republic of Uzbekistan.

According to the law, legal aid at the expense of the state is provided only by lawyers included in the register of lawyers providing legal aid at the expense of the state.

The following individuals have the right to receive legal aid at the expense of the state:

1) low-income persons, if they:

plaintiffs or defendants in civil cases;

applicants for administrative cases;

persons who have committed an administrative offence for which an administrative penalty in the form of administrative arrest is provided;

there are suspects, accused, defendants, as well as convicts in criminal cases;

2) individuals suffering from mental disorders, when they are provided with psychiatric care in accordance with the Law of the Republic of Uzbekistan "On Psychiatric Care";

3) individuals whose rights have been violated, who have applied to the court in connection with a violation of the equality of women and men provided for by the Law of the Republic of Uzbekistan "On guarantees of equal rights and opportunities for women and men";

4) the suspect, accused, or defendant, if the participation of a lawyer in a criminal case is mandatory in accordance with the Criminal Procedure Code of the Republic of Uzbekistan.

At the same time, it is advisable to include within the framework of this law citizens of Uzbekistan abroad (introduction of a system of legal assistance through consulates), victims of violence, certain categories of unemployed, and single mothers (fathers) with many children in need of social protection.

¹⁴ O'zbekiston Respublikasi Prezidentining "Ma'muriy islohotlar doirasida adliya organlari va muassasalarining mas'uliyatini yanada oshirish hamda ixcham boshqaruv tizimini shakllantirish to'g'risida"gi farmoni <https://lex.uz/uz/docs/6937312>

¹⁵ O'zbekiston Respublikasining "Advokatura to'g'risida"gi qonuni <https://www.lex.uz/acts/54503>

Provision of free legal aid to the population by legal clinics

Legal clinics providing free legal aid to the population operate under a number of organizations (higher educational institutions, trade union organizations, etc.). In particular, the legal clinic of the Tashkent State University of Law provides free legal assistance to citizens, eases their burdens, and also serves to improve the quality of the educational process. In particular, it introduces unique practices for organizing students' independent learning, meaningfully spending their free time, and improving their practical skills without leaving the university.¹⁶

The legal clinic of the Law Enforcement Academy of the Republic of Uzbekistan also provides free legal assistance to citizens (legal consultations, drafting of applications, etc.). You can receive free legal assistance by submitting an online application to the clinic through the official website (clinic.proacademy.uz) or by visiting in person.¹⁷

Conclusion

The system of providing free legal aid to the population requires unconditional improvement in accordance with the consistent humanitarian policy being implemented in our country. In these processes, it will be necessary to find legal and organizational solutions to some existing problems in the field, such as the shortage of qualified personnel, the difficulty in providing quality services in remote areas, the limited availability of financial resources, the need to constantly improve the legal literacy and culture of citizens, and the incomplete integration of information systems.

At the same time, it is proposed to organize regular training courses for legal personnel, develop mechanisms for attracting private sector and international funds in addition to the state budget for sustainable financing of the system, develop mobile and online legal aid services in order to expand regional coverage, as well as strengthen the mechanisms for integrating and monitoring all legal aid services through a single electronic platform.

As noted, the system of providing free legal assistance to the population plays an important role in the formation of a state governed by the rule of law and civil society, and also serves as an important step towards establishing social justice, effectively protecting the rights of citizens, and further deepening democratic reforms.

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¹⁶ https://aza.uz/uz/posts/joriy-yil-davomida-tdyuu-yuridik-klinikasi-tomonidan-2-mingdan-ortiq-aholiga-huquqiy-yordam-korsatildi-video_548249

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