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TOWARD A CHARACTERIZATION OF THE INSTITUTIONAL COMPONENT OF GUARANTEES FOR THE PROVISION OF FREE LEGAL AID BY ADVOCATES

Abstract. Purpose. The aim of this article is to provide a detailed characterization of the institutional component of the guarantees for the provision of free legal aid by advocates. **Results.** Based on the scholarly views of legal researchers, the article offers the author's original definition of the concept of the institutional component of guarantees for the provision of free legal aid by advocates. It is established that local self-government bodies may create specialized institutions for the provision of primary free legal aid, taking into account the needs of the territorial community. According to paragraph 4 of part 1 of Article 9 of the Law of Ukraine "On Free Legal Aid," such institutions should be considered a distinct group within the overall system of actors forming the institutional component of free legal aid provision by advocates. This is due to the frequent necessity of involving an advocate in order to strengthen the professional aspect of the legal aid provided. **Conclusions.** The article concludes that the institutional component of the guarantees for the provision of free legal aid by advocates comprises numerous actors who not only deliver relevant legal services, but also bear responsibility for the overall functioning of this sphere of public relations across various domains. These actors are examined as a system consisting of: 1) entities responsible for ensuring and guaranteeing the provision of free legal aid by advocates: a) national-level entities – the Verkhovna Rada of Ukraine, the President of Ukraine, and the Cabinet of Ministers of Ukraine; b) entities responsible for formulating and implementing state policy in the sphere of free legal aid – the Ministry of Justice of Ukraine and the Coordination Center for Legal Aid Provision; 2) providers of free legal aid: a) the bar – advocates and bodies of advocate self-governance; b) entities that interact with advocates and engage them in the provision of free legal aid – free legal aid centers and local self-government bodies; 3) entities involved in social and legal protection that cooperate with advocates in the course of providing free legal aid.

Key words: institutional component, public authorities, legal guarantees, free legal aid, legal assistance.

1. Introduction

2. Features of the institutional component of guarantees for the provision of free legal aid by advocates

At the outset of this research, it should be emphasized that the institutional component of the guarantees for the provision of free legal aid by advocates should be understood as a system of entities defined at the regulatory and legal level, whose activities are aimed at ensuring and safeguarding the exercise of an individual's right to receive, in legislatively defined cases, a specific type of legal services free of charge. This conceptual approach to the essence of the institutional component of the guarantees for the provision of free legal aid by advocates highlights

the significant number of state-authorized entities whose activities are, in one way or another, related not only to the direct provision of free legal aid but also to the stable functioning of this area of public relations.

First and foremost, it is necessary to identify the national-level entities which, by adopting appropriate normative legal acts, define the legal framework for the implementation of guarantees for the provision of free legal aid by advocates. Among such entities is the Verkhovna Rada of Ukraine. According to Article 85 of the Constitution of Ukraine, its powers in the context of ensuring the implementation of these guarantees include: amending the Constitution of Ukraine within the lim-

its and procedure established by law; adopting laws; approving and amending the State Budget of Ukraine, overseeing its execution, and making decisions on the report on its execution; reviewing and approving the Programme of the Cabinet of Ministers of Ukraine; exercising control over the activities of the Cabinet of Ministers of Ukraine in accordance with the law; and granting consent to the binding nature of international treaties of Ukraine and their denunciation (Constitution of Ukraine, 1996).

Attention should also be given to the powers of the President of Ukraine in ensuring the implementation of guarantees for the provision of free legal aid by advocates. As follows from Article 106 of the Constitution of Ukraine, these powers include: suspending acts of the Cabinet of Ministers of Ukraine on the grounds of their non-compliance with the Constitution, while simultaneously appealing to the Constitutional Court of Ukraine regarding their constitutionality; signing laws adopted by the Verkhovna Rada of Ukraine; exercising the right of veto concerning laws passed by the Verkhovna Rada of Ukraine (except laws amending the Constitution of Ukraine) with their subsequent return for repeated consideration by Parliament; and issuing decrees and orders that are mandatory throughout the territory of Ukraine (Constitution of Ukraine, 1996).

A special role within the system of the entities under study belongs to the Cabinet of Ministers of Ukraine, which is vested with a broad range of powers in ensuring the implementation of guarantees for the provision of free legal aid by advocates. According to Article 20 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" dated February 27, 2014, the Cabinet of Ministers has the following powers in the field of legal policy, legality, and the protection of human and civil rights and freedoms: it ensures the implementation of state legal policy; exercises control over the observance of legislation by executive authorities, their officials, as well as by local self-government bodies in the performance of delegated powers of executive authorities; creates conditions for the free development and functioning of the system of legal services and legal aid for the population; takes measures to ensure the operation of the free legal aid system; and ensures social and legal protection of persons for whom the fact of deprivation of personal liberty as a result of armed aggression against Ukraine has been established, as well as their family members, in accordance with the Law of Ukraine "On Social and Legal Protection of Persons in Respect of Whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression Against Ukraine

Has Been Established, and Their Family Members" (Law of Ukraine On the Cabinet of Ministers of Ukraine, 2014; Law of Ukraine On Social and Legal Protection..., 2022).

As follows from the analysis of the aforementioned legislative provisions, the specified group of entities involved in ensuring the realization of guarantees for the provision of free legal aid by attorneys may be designated as nationwide. This is due to the fact that this area of their activity is not primary, but rather conditioned by the need to carry out state governance not only in this sphere of social life but also in many others. In this regard, it is necessary to identify those entities that constitute the institutional component of the guarantees for the provision of free legal aid by attorneys, for whom the functioning of this area of social relations is one of the main directions of their activity.

Among such entities, the bodies and subdivisions of the Ministry of Justice of Ukraine should be named. According to the provisions of the Regulation "On the Ministry of Justice of Ukraine," approved by the Resolution of the Cabinet of Ministers of Ukraine dated July 2, 2014, No. 228, the Ministry is the main body in the system of central executive authorities responsible for the formation and implementation of state legal policy, state bankruptcy policy, and policy in the field of prevention of debtor insolvency, in the field of notaries, enforcement of court decisions and decisions of other bodies (officials), state registration of civil status acts, state registration of property rights to real estate and their encumbrances, state registration of encumbrances on movable property, state registration of legal entities, public associations without legal entity status, individual entrepreneurs, and separate subdivisions of legal entities established under the legislation of a foreign state, etc. (Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulation on the Ministry of Justice of Ukraine, 2014). From the above, it follows that the Ministry of Justice of Ukraine is responsible for a wide range of issues related to ensuring the functioning of various social relations, including the formation and implementation of policies by this central executive authority to ensure the realization of guarantees for the provision of free legal aid by attorneys.

The next group of subjects within the studied system, as an institutional component of the guarantees for the provision of free legal aid by attorneys, consists of the actual providers of such aid. According to a comprehensive analysis of Part 1 of Article 9 and Part 1 of Article 15 of the Law of Ukraine "On Free Legal Aid," the providers of free legal aid include: executive authorities; local self-gov-

ernment bodies; free legal aid centers; specialized institutions for providing primary legal aid established by local self-government bodies based on the needs of the territorial community; private legal entities authorized to provide legal aid and engaged by local self-government bodies in accordance with the law; attorneys and other specialists in the relevant field of law engaged by local self-government bodies in accordance with the law; and attorneys included in the Register of Attorneys Providing Free Secondary Legal Aid (Law of Ukraine On Free Legal Aid, 2011). Thus, in this case, we are referring to all providers of free legal aid and the related legal services within its scope without exception.

At the same time, considering the specifics of the issue under study, our interest lies in those entities that may be identified as the institutional component of the guarantees for the provision of free legal aid specifically by attorneys. Therefore, we consider it appropriate to divide them into two groups.

The first of these groups, in our opinion, should include the legal profession itself as an institutional component of the guarantees for the provision of free legal aid. According to Article 2 of the Law of Ukraine "On Advocacy and Advocacy Activities" dated July 5, 2012, the legal profession is a non-governmental self-governing institution that ensures the provision of defense, representation, and other types of legal assistance on a professional basis and independently decides on matters related to its organization and activities in accordance with the law. The legal profession of Ukraine consists of all attorneys who are authorized to practice law. In order to ensure proper legal practice, compliance with guarantees of advocacy, protection of attorneys' professional rights, maintaining a high level of professionalism among attorneys, and resolving matters of disciplinary liability, the system of attorney self-governance operates in Ukraine (Law of Ukraine On Advocacy and Advocacy Activities, 2012). From this it follows that one of the main institutional components of the guarantees for the provision of free legal aid by attorneys is the legal profession of Ukraine, which includes both attorneys and the bodies of attorney self-governance.

The second group of entities involved in the provision of free legal aid, as an institutional component of such guarantees, includes those that interact with attorneys within this sphere of social relations, thereby engaging them in this area of activity. Primarily, this group includes the free legal aid centers. According to Article 16 of the Law of Ukraine "On Free Legal Aid," the Ministry of Justice of Ukraine establishes regional (republican (of the Autonomous Republic of Crimea), oblast, Kyiv, and Sevastopol

city), local (district, inter-district, city, city-district, inter-district and district in cities), and interregional (whose powers extend to several administrative-territorial units) centers for the provision of free legal aid. These centers are territorial branches of the Coordination Center for Legal Aid Provision and are established based on the needs of the respective administrative-territorial units to ensure access to free legal aid (Law of Ukraine On Free Legal Aid, 2011).

3. The Role of Local Self-Government Bodies in Establishing Specialized Institutions for the Provision of Free Primary Legal Aid

As stated in the Regulations on Centers for the Provision of Free Legal Aid, approved by the Order of the Ministry of Justice of Ukraine No. 967/5 dated July 2, 2012, centers for the provision of free legal aid are established, reorganized, and liquidated by the Ministry of Justice of Ukraine upon the proposal of the Coordination Center, taking into account the needs of the relevant administrative-territorial unit and ensuring individuals' access to free legal aid. These centers serve as territorial branches of the Coordination Center. While performing their functions, they interact, among others, with bodies of attorney self-governance (Order of the Ministry of Justice of Ukraine On Approval of the Regulations on Centers for the Provision of Free Legal Aid, 2012). As an institutional component of the guarantees for the provision of free legal aid by attorneys, these centers can be characterized based on their numerous powers within this sphere of social relations. These powers can be grouped as follows: (1) powers related to information support of such activities; (2) powers related to financial support of such activities; (3) powers related to staffing such activities; (4) control and oversight powers; (5) other powers related to ensuring the implementation of guarantees for the provision of free legal aid by attorneys.

In addition, attention should be paid to local self-government bodies. According to the provisions of the Law of Ukraine "On Local Self-Government in Ukraine" dated May 21, 1997, local self-government in Ukraine is the right and real capacity of a territorial community—residents of a village or a voluntary association of several villages, a settlement, or a city—to independently or under the responsibility of local self-government bodies and officials, resolve matters of local importance within the limits of the Constitution and laws of Ukraine (Law of Ukraine On Local Self-Government in Ukraine, 1997). According to Part 7 of Article 12 of the Law of Ukraine "On Free Legal Aid," local self-government bodies may enter into agreements with attorneys and other

legal professionals to provide free primary legal aid within the relevant administrative-territorial unit (Law of Ukraine On Free Legal Aid, 2011). It should be noted that local self-government bodies may also establish specialized institutions for the provision of free primary legal aid, taking into account the needs of the territorial community. According to paragraph 4 of Part 1 of Article 9 of the Law of Ukraine "On Free Legal Aid," these institutions should be regarded as a separate group within the studied system of entities as an institutional component of the provision of free legal aid by attorneys. This is due to the fact that in the course of providing legal aid, it is often necessary to involve an attorney to strengthen the professional aspect of such activities.

From the analysis of the above-mentioned entities, it follows that the latter group of subjects, as part of the institutional structure of the guarantees for the provision of free legal aid by attorneys, may be created either by the decision of local self-government bodies or by the relevant executive authority. This points to yet another group of such subjects. A similar direction of activity is carried out by another group of entities that are part of the executive authorities and, according to paragraph 1 of Part 1 of Article 9 of the Law of Ukraine "On Free Legal Aid," may be characterized as an institutional component of the provision of free legal aid by attorneys. Examples of such entities include: support services for military personnel, members of the civil protection service, police officers, and their families; social rehabilitation centers (children's villages); social and psychological rehabilitation centers for children; rehabilitation centers for persons who have suffered from human trafficking.

4. Conclusion

Thus, as follows from the analysis of the above positions, the institutional component of the guarantees for the provision of free legal aid by attorneys is represented by numerous entities that not only provide the relevant legal services but are also generally responsible for the proper functioning of this sphere of social relations across various directions. Accordingly, these entities have been studied by us as a system composed of: (1) entities that ensure and guarantee the provision of free legal aid by attorneys: (a) nationwide entities – the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine; (b) entities responsible for the development and implementation of state policy in the field of free legal aid provision by attorneys – the Ministry of Justice of Ukraine, the Coordination Center for Legal Aid Provision; (2) entities that provide free legal aid: (a) the Bar – attorneys and bodies of attorney self-governance; (b) entities that

interact with attorneys and thereby engage them in the implementation of free legal aid – legal aid centers, local self-government bodies; (3) entities of social and legal protection that interact with attorneys within the scope of providing free legal aid: (a) specialized institutions – shelters for persons who have suffered from domestic and/or gender-based violence; day centers for social and psychological assistance to persons affected by domestic and/or gender-based violence; centers for assistance to survivors; resilience centers; territorial centers for the provision of social services; etc.; (b) entities established within the structure of executive authorities – support services for military personnel, members of the civil protection service, police officers and their families; social rehabilitation center (children's village); social and psychological rehabilitation center for children; rehabilitation center for persons affected by human trafficking; etc.

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ДО ХАРАКТЕРИСТИКИ ІНСТИТУЦІЙНОЇ СКЛАДОВОЇ ГАРАНТІЙ НАДАННЯ БЕЗОПЛАТНОЇ ПРАВНИЧОЇ ДОПОМОГИ АДВОКАТАМИ

Анотація. Мета статті полягає у наданні характеристики інституційній складовій гарантій надання безоплатної правничої допомоги адвокатами. **Результати.** У статті, на основі наукових поглядів вчених, запропоновано авторське визначення поняття інституційної складової гарантій надання безоплатної правничої допомоги адвокатами. З'ясовано, що органи місцевого самоврядування можуть утворювати спеціалізовані установи з надання безоплатної первинної правничої допомоги з урахуванням потреб територіальної громади, яких з огляду на приписи п. 4 ч. 1 ст. 9 Закону України «Про безоплатну правничу допомогу» слід розглядати як окрему групу досліджуваної системи суб'єктів як інституційної складової надання безоплатної правничої допомоги адвокатами. Це пов'язано із тим, що в межах надання ними безоплатної правничої допомоги доволі часто виникає необхідність залучення саме адвоката задля посилення професійної складової такої діяльності. **Висновки.** Зроблено висновок, що інституційна складова гарантій надання безоплатної правничої допомоги адвокатами представлена чисельними суб'єктами, які не тільки надають відповідні правничі послуги, а й у цілому відповідальні за належне функціонування даної сфери суспільних відносин по найрізноманітнішим напрямам. З огляду на що такі суб'єкти досліджені нами як система, що утворена з: 1) суб'єктів, які забезпечують та гарантують надання безоплатної правничої допомоги адвокатами: а) загальнодержавні суб'єкти – Верховна Рада України, Президент України, Кабінет Міністрів України; б) суб'єкти, відповідальні за формування та реалізацію державної політики у сфері надання безоплатної правничої допомоги адвокатами – Міністерство юстиції України, Координаційний центр з надання правничої допомоги; 2) суб'єктів надання безоплатної правничої допомоги: а) адвокатура – адвокати, органи адвокатського самоврядування; б) суб'єкти, які взаємодіють з адвокатами внаслідок чого залучають їх до реалізації безоплатної правничої допомоги – центри з надання безоплатної правничої допомоги, органи місцевого самоврядування; 3) суб'єкти соціального та правового захисту, які в межах надання безоплатної правничої допомоги взаємодіють з адвокатами.

Ключові слова: інституційна складова, органи державної влади, юридичні гарантії, безоплатна правничка допомога, правничка допомога.