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TÍTULO: Regulación legal internacional del derecho a la asistencia jurídica cualificada.

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RESUMEN: El establecimiento constitucional de los derechos y libertades individuales se lleva a cabo en el espíritu de las normas internacionales que no siempre corresponden a su completa coincidencia, lo que a veces conduce a un conflicto entre las normas constitucionales del estado y las disposiciones de los documentos internacionales. Basándose en el hecho de que el derecho a la asistencia legal calificada es una institución legal importante para la protección de los derechos humanos y las libertades, los autores propusieron un análisis jurídico comparativo de las normas legales internacionales relacionadas con este derecho.

PALABRAS CLAVES: Protección judicial, asistencia jurídica, derechos humanos, normas internacionales, constitución.

TITLE: International legal regulation of the right to qualified legal assistance.

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ABSTRACT: Constitutional establishment of individual rights and freedoms is carried out in the spirit of international standards that does not always correspond to their complete coincidence sometimes leading to a conflict between constitutional norms of the state and the provisions of international documents. Based on the fact that the right to qualified legal assistance is an important legal institution for the protection of human rights and freedoms, the authors proposed a comparative legal analysis of international legal norms relating to this right.

KEY WORDS: judicial protection, legal assistance, human rights, international norms, constitution.

INTRODUCTION.

Constitutional enshrinement of the human right to qualified legal assistance brings it to the level of major ones. It is a legal direction for regulating all public relationships that are associated with the provision of legal assistance: by a lawyer to a suspect, accused, or defendant person, or representation in civil and arbitration proceedings, in constitutional courts, or receiving advice from a notary, patent attorney or other entities rendering legal assistance, etc.

The problems of implementing the guarantees of judicial protection to the rights and freedoms of a person and citizen were actively considered by Bulnina (2011). Some questions concerning the conceptual, substantive and security aspects of the right to qualified legal assistance were presented in the works of Logvinets, et al. (2018).

Analysis of regulatory legal acts and scientific literature has shown that unified approaches to the definition of the claimed right have not yet been developed in legal literature and regulatory practice (Chae & Shin, 2015; Chahine, 2018; Courtney, 2018).

In this regard, international legal acts concerning the right to receive qualified legal assistance, which analysis is of scientific interest and allows us to better understand the content and conditions for the realization of this right at the international level and within a particular country deserve special attention.

DEVELOPMENT.

Methodology.

Various methods were used in the work: systematic, analysis and synthesis, logical and other general scientific methods, as well as a number of specific scientific methods. Using the comparative legal research method allowed us to analyze the legal regulation of the right to qualified legal assistance in international legal acts.

Results and discussion.

In the objective sense, the right to qualified legal assistance is an interdisciplinary legal institution consisting of the norms of international and other branches of law united by common principles.

When disclosing the content of subjective right to qualified legal assistance, two approaches can be distinguished: narrow, i.e. the exercise of this right only within the framework of the provision of

legal assistance by an attorney, and broad, when legal assistance is provided not only by an attorney, but also by other authorized subjects.

Considering this, the right to qualified legal assistance is enshrined in international acts and guaranteed by society and the state the opportunity of a citizen to receive qualified legal assistance in meeting their needs and legitimate interests.

In this regard, it is necessary to refer to the semantic analysis of the “qualified legal assistance” concept. In the linguistic aspect, legal assistance is a type of professional activity of lawyers and their professional behavior.

In most cases, legal assistance is perceived as assistance provided as a result of the professional activities of a lawyer, the main purpose of which is the necessary assistance in preventing violations of the rights, freedoms and legitimate interests of legal entities, eliminating or reducing the adverse consequences of such violations, and also restoring the proper position of a legal entity.

In foreign literary sources, there is no uniformity of understanding of qualified legal assistance.

S. Rice considers legal assistance as providing access by the state to legal information, legal advice, as well as to relevant education and knowledge (Losilkina, et al. 2017). Let us make a remark that in the Russian Federation the advocacy is an institution of civil society; therefore, this definition is unacceptable for Russian legal reality.

From the position of M. Robertson and J. Giddings, with the help of legal services, the law provides for the protection, provision, approval and regulation of consumer rights. Legal assistance (Rice, 2010) consists in providing legal advice, legal representation and other forms of legal assistance to consumers. As we see, in this definition consumers are indicated as a special subject. And we consider the subjective right which is immanent to everyone.

In the Department of Justice of South Africa, legal assistance includes any form of legal advice, drafting legal documents, as well as representation, which require the experience of a person engaged in activities in the legal sphere (Robertson and Giddings, 2002).

Summarizing the above-mentioned foreign approaches, we note that it is not possible to identify common features of foreign experience in the declared part, since there are differences in the peculiarities of the legal systems of states.

Regarding qualifications, the analysis of legal literature led to the conclusion that the qualification of assistance can be considered in the aspect of professionalism. It is more focused on the subject who provides assistance, on the formal side of activity, on activity as a process.

Qualification in the sense of having special training and adherence to ethical norms indicates that such a subject is potentially able to perform certain actions that will lead to the protection of rights or the restoration of the rights, freedoms and interests of the principal.

Next, we turn to the consideration of international legal acts relating to the right to receive qualified legal assistance. Among them, there are the so-called universal acts.

Art. 14 of the International Covenant on Civil and Political Rights gives detailed provision on “all possibilities for protection”, including the right to be tried in person and to defend oneself in person or through a defender chosen by him/herself; if he/she does not have a lawyer, be notified of this right and have a lawyer assigned to him/her in any case when the interests of justice so require.

The right to the assistance from a designated counsel and its gratuitousness for the person who needs in such assistance, provided that there are not enough funds to pay for counsel’s services, has found its statutory consolidation in a number of international agreements. So, according to item “D”, part 3 of art.14 of the International Covenant on Civil and Political Rights, everyone has the right to have a lawyer appointed to him/her in any case when the interests of justice so require, free of charge for him/her in any case when he/she does not have enough money to pay for this lawyer. A similar rule

is contained in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Part 3, Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates guarantees of the right to legal representation (although in criminal cases) (8). In the case “Potrimol v. France” (A 277-A, 1993), the European Court ruled that “the right of every person accused of committing a criminal offense to the defense of a lawyer appointed officially when necessary is one of the fundamental features of a fair trial”. The Convention does not contain such (direct) guarantees in respect of civil cases; however, it can be assumed that they are contained in paragraph 1 of Art. 6 (right to access to justice): “Everyone in the case of a dispute over his/her civil rights and obligations, has the right to a fair and public hearing of his/her within a reasonable time by an independent and impartial court” (Robertson and Giddings, 2002).

When considering cases at the European Court of Human Rights, it is often necessary to address the issue on access to justice (Losilkina, et al. 2017), as well as the right to a fair trial (Robertson and Giddings, 2002). In the case of *Golder v. UK* (A 18, decision dated February 21, 1975) the European Court found a violation of the right to access to justice in that the prisoner was not allowed to contact with a lawyer to file a civil lawsuit in court (Logvinets, et al. 2018).

Among international legal acts, it is also necessary to single out a group of special ones with respect to securing the right to legal assistance, since their norms are addressed not to the universal circle of persons, but to strictly defined ones.

Thus, the Standard Minimum Rules for the Treatment of Prisoners dated 1955, determining the right of prisoners to legal assistance, imply mainly suspects and accused persons (paragraph 93) and do not explicitly state that all prisoners, including convicts, have the right to legal assistance.

Within the framework of this article, it is also necessary to pay attention to international legal acts that regulate the status of persons providing qualified legal assistance.

Thus, the quality standards of legal assistance are established by the Basic Provisions on the Role of Lawyers (Bulnina, 2011) and the Basic Principles on the Role of Lawyers (Rice, 2010).

These documents have a similar structure. They contain provisions relating to access to lawyers and legal aid, special guarantees, qualifications and training, the duties and responsibilities of lawyers, freedom of expression, professional associations, and disciplinary measures for improper performance of their duties.

The Basic Provisions on the Role of Lawyers also establish requirements for their qualifications. Article 9 obliges governments, professional bar associations and educational institutions to ensure that lawyers receive appropriate education, training and knowledge of human rights and fundamental freedoms recognized by national and international law. The knowledge by lawyers of the norms of international human rights law is thus recognized as a necessary condition for qualification.

Article 14 instructs lawyers to be guided in rendering legal assistance not only by domestic law, but also by international legal norms: “lawyers assisting their clients in administering justice should strive to respect human rights and fundamental freedoms recognized by national and international law”.

As we see, the above norms which are oriented on the international law norms are not just wishes; they are formulated in the form of requirements. The basic principles on the role of lawyers impose similar requirements on all members of the legal profession.

Among the fundamental international documents, there should be noted the General Principles of Ethics of Lawyers, approved in 1995 by the Board of the International Bar Association - the largest association of professional lawyers from more than 170 countries (Logvinets, et al. 2018).

The importance of adhering to recognized standards of advocacy stresses the fact that the UN Commission on Human Rights appointed the Special Rapporteur on the independence of judges and lawyers, and now it periodically reviews reports and materials from the Rapporteur (Robertson and Giddings, 2002).

In Resolution 2004/32 dated April 19, 2004 “Integrity of the judicial system”, the Commission once again drew the attention of states to the right of all accused persons to defend themselves in person or through their own chosen counsel and to have all the necessary guarantees for their defense.

To date, the international community has paid great attention to the role of lawyers in the judicial process. In particular, the European Union has adopted the Recommendations from the Committee of Ministers of the European Council “On freedom to practice the profession of lawyer”, which allow the attorney community to be viewed as an organization completely independent of any state. The document points out the independence of lawyers in their professional activities from any state, but at the same time imposes significant restrictions on the level of their professional qualifications and compliance with the legal and ethical standards that have been established in a particular community (Logvinets, et al. 2018). Thus, lawyers must respect the judiciary and fulfill their duties before the court in a manner that complies with national legal and other rules and professional standards, and cannot suffer the consequences or be pressured or endangered by any sanctions.

Unfortunately, more specialized norms of international law that would substantively illustrate the designated topic of the article have not been revealed.

CONCLUSIONS.

Despite the absence of a specialized international legal act that fully discloses the essence and nature of the right to qualified legal assistance, as well as guarantees and mechanisms for its implementation, this right, like other basic (constitutional) rights, is permanent. It belongs to everyone, regardless of

the entry into relationships or the launch of a mechanism to use the rights (when realization of the right, for example, is not related to the person's entry into a specific relationship).

It exists, because it is guaranteed by international legal standards and national legislation.

Taking into account all that said about the stated subjective right in the context of given human rights relations, it is necessary to understand the right to qualified legal assistance in a legal process as an internationally legal and legally guaranteed opportunity for each principal to receive proper legal assistance from authorized entities acting in his / her interests within frameworks of the trial.

The authors have studied the legal consolidation of nature and the possibility of realizing the right to qualified legal assistance as one of the guarantees of the operation of the judicial human rights mechanism. Based on this, the conclusions were drawn that the legislator should proceed from the search for balance, that is, by filling the specific national content in international standards of this law, as well as the need to interpret the norms of national law in the spirit of international norms and principles.

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