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**STATE-GUARANTEED LEGAL ASSISTANSE SYSTEM IN THE
REPUBLIC OF MOLDOVA**

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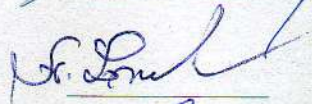
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THE TABLE OF CONTENT

CONCEPTUAL LANDMARKS OF THE RESEARCH.....4
CONTENT OF THE THESIS.....7
GENEGAL CONCLISIONS AND RECOMMENDATIONS.....15
BIBLIOGRAPHY.....21
THE LIST OF PUBLICATIONS ON THE TOPIC OF THE THESIS.....25
ANNOTATION (in Romanian, Russian and English)29

CONCEPTUAL LANDMARKS OF THE RESEARCH

Scientific Topicality and Novelty of the Research: Modern constitutional systems regard justice to be an important guarantee of civil rights and freedoms [9, p. 12]. Therefore, ensuring access to justice, which safeguards legal protection of rights and interests, holds particular significance in today's conditions [24, p. 117].

The modern state tends to reduce its involvement in various social relations, including the legal status of the individual. In this context, legal assistance becomes particularly important as part of the right to a fair trial and the guarantee of access to court for the protection of rights and freedoms. And restricting access to legal assistance can seriously hinder access to justice, especially for those who do not have sufficient means to pay for the services of a lawyer. This right is guaranteed by paragraph (3) of Article 26 of the Constitution of the Republic of Moldova [8], and in the cases established by the Law on State-Guaranteed Legal Assistance [16], it represents a means of realizing the principle of equality before the law and the court and is intended to ensure real equality in the sense of equal opportunities for different subjects, depending on their status - social, property, etc. [26, p. 105].

Today's reality is characterized by a low level of income of the population [2], insufficient legal culture of citizens, and a lack of basic legal knowledge among them [27, p. 82]. In these conditions, the demand for state-guaranteed legal assistance is growing from year to year, for which the Moldovan state spends considerable sums [6]. At the same time, there are a number of shortcomings in the functioning of the state-guaranteed legal assistance system, to which both the National Council for State-Guaranteed Legal Assistance and experts who have studied some aspects of the system's functioning have drawn attention [7], [23], [19], [12], [5], [11], as well as the Ombudsman [21] and the Court of Accounts [22].

Some measures to optimize the state-guaranteed legal assistance system are provided for in the Strategy for the Independence and Integrity of the Justice Sector 2022-2025 and in the Action Plan for its Implementation [17]. Optimization of the state-guaranteed legal assistance system is also in line with the National Security Strategy of the Republic of Moldova, the draft of which was approved by Parliament on December 15, 2023 [20].

The scientific novelty and originality of the research lies in the in-depth and comprehensive study of the existing system of state-guaranteed legal assistance in the Republic of Moldova, since the problem of providing such assistance appeared in the legal practice of the Republic of Moldova relatively recently and has not yet been sufficiently developed by local specialists [28, p. 297]. Doctrinal ideas and international

standards were investigated and analyzed. A new aspect, not previously mentioned in the literature, was identified and described, which was defined as the "personal criterion for granting state-guaranteed legal assistance ". An author's definition of the "system of state-guaranteed legal assistance " was given. The circumstances that create difficulties in the functioning of the state-guaranteed legal assistance system in the Republic of Moldova, as well as the factors that hinder the achievement of full and unhindered access to such assistance, were identified, analyzed, and described. Optimal ways to overcome the identified difficulties and improve the functioning of the system were developed, and proposals for improving normative regulation were formulated.

The hypothesis of this research is an assumption according to which:

- the system of state-guaranteed legal assistance is a necessary mechanism in a state of law, through which the state eliminates financial and economic barriers to equal and free access to justice and ensures the observance of public interests in its exercise;
- the system of state-guaranteed legal assistance existing in the Republic of Moldova generally corresponds to international standards, but requires optimization to improve its efficiency. It requires a unification of the criteria for granting and maximization of the reimbursement of expenses for the services provided.

Purpose and Objectives of the Research: The purpose of this research is a comprehensive analysis and evaluation of the existing system of state-guaranteed legal assistance in the Republic of Moldova, from the perspective of doctrinal views and international standards, in order to identify problem areas and inconsistencies. To achieve this goal, the following objectives must be solved:

1. Analysis of the scientific situation in the field of research within the framework of international and national doctrines to understand the current state of affairs;
2. In-depth study and analysis of standards on the right to state-guaranteed legal assistance established by the main international human rights documents in order to identify benchmarks for evaluating the national system;
3. Scientific, normative, and practical analysis of the organization of the functioning of state-guaranteed legal assistance systems at the international and national levels;
4. Development of a definition of the "system of state-guaranteed legal assistance " to clarify the subject of research and ensure a unified understanding;
5. Detailed analysis of the international criteria and characteristics for granting state-guaranteed legal assistance depending on the area of regulated social relations, to identify the differences and similarities in national practice;
6. In-depth research and analysis of the conditions and procedures for granting state-guaranteed legal assistance in the Republic of Moldova through the prism of

international criteria and identification of legal and institutional problems that influence the process of granting it;

7. Development of proposals for amendments to legislation in order to improve the system of state-guaranteed legal assistance.

Research Methodology and Justification of the Chosen Research Methods:

This research employed various methodological approaches, as the object of study - the system of state-guaranteed legal assistance - represents a complex and multidimensional entity in the context of ensuring human rights in a state of law. The following methods were used: dialectical philosophical method, metaphysical philosophical method, historical method, comparative legal method, formal legal method, sociological method, personal observation method, logical methods of analysis and synthesis.

The Scientific Problem Addressed by the Research: The research problem addressed consists of the analysis and evaluation of normative acts regulating the functioning of the state-guaranteed legal assistance system in the Republic of Moldova, as well as the practice of their application, from the perspective of international standards, in order to establish its conformity with these standards and develop recommendations that can contribute to the improvement of this system and increase its efficiency.

Scientific and Theoretical Importance of the Dissertation: The scientific and theoretical importance of the dissertation lies in solving a scientific problem during the research, on the basis of which the process of modernization of the system of state-guaranteed legal assistance in the Republic of Moldova can be influenced, increasing its efficiency. This consists of:

- concretizing the general theoretical international standards regarding state-guaranteed legal assistance;
- identifying the theoretical and practical problems of the functioning of state-guaranteed legal assistance systems in the Republic of Moldova, as well as their analysis and evaluation through the prism of the aforementioned standards;
- formulating concrete legislative proposals (*lege ferenda*) based on the research results.

Practical Importance of the Research: The practical importance of the research lies in the possibility of using its materials, conclusions, and formulated recommendations in the activities of law-making and law enforcement, as well as in the educational process for the training of legal personnel.

Approval of Research Results: The results obtained in the research process were presented at various international and national scientific conferences between 2020

and 2023. Eleven scientific articles on the research topic were published in national scientific journals, including one co-authored with the research supervisor, Professor, Habilitated Doctor of Law Andrei Smochină.

Structure and Volume of the Work: The structure of the work is defined by the purpose and objectives of the research. The work includes the following: abstract in Romanian, Russian, and English; introduction; four chapters, divided into sections, with conclusions for each chapter; general conclusions and recommendations; bibliography of 475 sources; two appendices.

CONTENT OF THE THESIS

Introduction. The Introduction justifies the choice of the research topic, its topicality and scientific novelty. The goals and objectives of the research are set. The hypothesis is formulated. The methodology is summarized. The theoretical and practical significance of the research results is also described, and information about their approval is provided. A characteristic of the thesis structure is given.

Chapter 1: “The Role of the State in Providing Legal Assistance: An Analysis of Doctrinal Views in the Context of Access to Justice and the Right to Defense”. This chapter contains a review of the research and views of foreign and Moldovan scholars on the topic of the thesis, in the aspect of the development of the doctrine at the present stage. The chapter consists of five sections.

Since, according to modern doctrine, legal aid is the main element of fair access to court, the analysis of the scientific situation in the field of research began with a review of the theoretical developments of Moldovan and foreign authors on the promotion of human rights and access to justice in a state of law. Further, taking into account the attention that all democratic states pay today to the right to defense, the second section of the chapter presents a review of scientific ideas related to the understanding of the place and role of this important constitutional right in ensuring the rule of law and fairness in the exercise of justice, as well as its content, in which researchers also include legal assistance. The third section analyzes modern theoretical developments in the field of the state's obligation to provide free legal assistance to poor members of the society. The fourth section contains an analysis of two opposing points of view on the problem of self-defense and ex officio legal assistance, which, according to researchers, should also be guaranteed by the state. And the author's conclusions, made as a result of the foregoing, conclude the chapter.

The author notes that in the second half of the 20th century, legal assistance mechanisms became widespread in large developed industrial democracies in the

Western world, which set out to build a general welfare state. In the 1970s, there was a significant breakthrough in the provision of legal aid for the poor segments of the population. Gradually, it became clear that even members of the middle class need, in some cases, state support for access to justice [1]. Over the following years, significant successes have been achieved in terms of access to justice. However, this problem remains topical, especially in developing countries [15].

The Republic of Moldova, which has embarked on the path of building a rule of law state, must complete the transformations begun in 1991. This will make it possible to create a fair, strong and healthy society in which human rights will be fully respected [14]. However, in the modern world, it is important not only to promote human rights, but also to ensure their protection. A key element of protection of rights is access to justice, and legal assistance is one of the main ways to ensure this.

Issues related to access to justice, the right to defense, and the right to legal assistance as a fundamental element of the right to a fair trial have been addressed in their studies by national researchers Elena Aramă, Alexandru Arseni, Gheorghe Avornic, Anatolie Bantuș, Igor Băcu, Igor Botezatu, Teodor Cârnaț and Maria Cârnaț, Mariana Chicu, Rodica Ciobanu, Adrian Crasnobaev, Ion Creangă, Gheorghe Costachi, Natalia Creciun, Igor Dolea, Gheorghe Golubenco, Silvia Goriuc, Ion Guceac, Corneliu Gurin, Eugen Guțanu, Arina Ialanji, Pavel Madrigan, Iurie Margineanu, Alexandru Negru, Andrei Pîntea, Vitalie Pîrlog, Mihai Poalelungi, Victor Popa, Petru Railean, Inga Roșca, Svetlana Slusarenco, Andrei Smochină and Carolina Smochină, Liliana Staver, Gheorghe Sult, Gheorghe Susarenco, Victoria Șterbeț, Elena Tanase, Eugeniu Trocin, Serghei Țurcan, Tudor Osoianu, Ivan Vesco, Dumitru Vieru and Eufimia Vieru, Tatiana Vizdoagă, Victor Zaharia, Veaceslav Zaporojan, as well as foreign researchers Mihai Apetrei, Alexandru Baroi, Raluca-Miga Beșteliu, Catrinel Brumar, Constantin Bulai, Ion Deleanu, Vintilă Dongoroz, Cristian Ionescu, Gheorghina Fusu, Nicu Jidovu, Siegfried Kahane, Laurentiu Nae, Ion Neagu, Ion Negru, Gheorghe Nistoreanu, Alexandrina-Mirela Perian, Claudia Roșu, Mindora-Ioana Rusu, Grigore Teodoru, Laura Magdalena Trocan, Constantin Țeț, Beatrice Ștefănescu, Costin Ion Udrea, Nicolae Volonciu (Romania), Earl Johnson Jr., Mohmoud Cherif Bossiouni, Michael P. Scharf, Eugene Cerruti (USA), Ergül Çeliksoy, Peter Henry Gross, James Gordley, Bryant Garth (UK), Henrikka Rosti, Johanna Niemi, Maarjikka Lasola (Finland), Brian Etherington, Simon Rice (Australia), Mauro Cappelletti (Italy), Kristel Juriloo (Norway), Anđelija Adamović (Slovenia), А. М. Пальховский, И. Я. Фойницкий, Е. В. Васьковский, Григорий Диков (Russia), Dovydas Vitkauskas (Latvia), В. Г. Андрусив, В. В. Сміх, В. С. Личко, Ю. О. Данилевська, Л. В. Павлик, З. З.

Петрович, У. О. Цмоць, Г. І. Гладун, Ю. Т. Шрамко, О. Г. Юршкевич, М. В. Стаматіна, В. С. Наливайко, О. В. Тарашук, О. М. Дуфенюк, С. І. Марко (Ukraine), whose works formed the theoretical basis of the research.

At the same time, the issue of state-guaranteed legal assistance has been developed primarily by foreign authors. Despite the growing interest in this issue, fundamental research in the Republic of Moldova on this topic is rare.

As a result of studying the views of the aforementioned scholars, expressed in the studied works, published on the research topic, both in the country and abroad, it is concluded that the analyzed doctrinal interpretations facilitate the process of understanding the legal essence of the right to state-guaranteed legal assistance and the respective legal institution.

In particular, the analysis of doctrinal views on the issue of access to justice has contributed to the formation of the conclusion that state-guaranteed legal assistance, as one of the elements of the right to defense, is "the most fundamental" of human rights, as it represents a means of protection of these rights, ensuring the possibility of fair and equal access to justice. In certain cases, when public interests prevail over personal interests, the state coercively compels a person, regardless of his or her desire, to accept the legal assistance provided, which in such situations becomes mandatory.

The author agrees with the opinion that in criminal proceedings, legal assistance must be provided *ex officio* to all defendants, regardless of the severity of the offense, the complexity of the case, and the severity of the punishment. And even independently of the person's desire, since the public interest in a fair examination of the case and the pronouncement of a just sentence must prevail over personal interests, regardless of the reasons behind them. Legal assistance cannot compete with the right to defense on its own, since these two rights, which, along with the other rights of the accused, constitute the content of the right to defense, only complement each other [18, p. 18].

It is concluded that legal assistance is an effective means of ensuring human rights and freedoms. The institute of legal aid acquires special importance in the context of significant changes in social relations in the process of reforming society and the state. In this sense, the author notes that the democratization of the Republic of Moldova, the need to use generally accepted standards for the protection of human rights and freedoms make scientific research in the field of state-guaranteed legal assistance extremely relevant and socially significant.

Chapter 2 of the work is entitled "**Normative International Regulation and Practical Impact in the National Space**" and consists of eight sections. In the first section, the main international standards concerning the right to state-guaranteed legal

assistance, established and developed by a series of international documents, are analyzed. In the second and third sections, the main existing models in the world of managing state-guaranteed legal assistance systems and providing it are presented. The fourth section presents the historical path of the state-guaranteed legal assistance system in the Republic of Moldova. The fifth section is dedicated to the analysis of the national model of management of the state-guaranteed legal assistance system, as well as the bodies that participate in the management of the system at all three levels of administration, and investigates their competences. The sixth section analyzes the entities that provide legal assistance and the characteristics of each of them. The seventh section contains an analysis of the ways of ensuring the quality of legal services provided, imposed by law on each entity managing the system, and the eighth section presents the author's conclusions on the materials of Chapter Two.

The author notes that the scope of human rights and freedoms in modern society is determined not only by the peculiarities of a particular community of people, but also by the development of human civilization as a whole and the level of integration of the international community [25, p. 101]. And the enshrinement of the right to legal assistance in Article 26 of the Constitution of the Republic of Moldova is the result of the implementation of international legal norms, which are proclaimed in general and special global international acts and which have also formed the basis for the functioning of the state-guaranteed legal assistance system, created in the Republic of Moldova.

However, the creation of an effective state-guaranteed legal assistance system cannot be limited to the adoption of a corresponding law. The construction and development of such a system requires additional efforts, aimed at finding practical solutions for its optimization, organizing the activities of the subjects that provide legal assistance, controlling its quality, and ensuring wide access to free legal aid for potential beneficiaries.

Finding such solutions can be facilitated by drawing on international experience, as in recent decades, state-guaranteed legal assistance systems have been created and successfully developed in various countries around the world. Analysis and evaluation of the international experience of the functioning of state-guaranteed legal assistance systems will help to avoid the mistakes of others and create ample opportunities for optimizing existing ones and creating new, more efficient mechanisms for providing quality legal assistance to those who need it.

The Republic of Moldova is not yet a member of the EU, but the Association Agreement between the European Union and the Republic of Moldova, signed in 2014, opens up new prospects for deepening democratic reforms, including in the area of the

rule of law and respect for human rights [10, p. 13]. The content of the Association Agreement shows that political dialogue, among other things, will be focused on internal reforms aimed at ensuring good governance by increasing the efficiency of democratic institutions and the rule of law, as well as respect for human rights and fundamental freedoms [4, p. 146]. The Association Agreement provides for legal cooperation between the EU and Moldova in civil, criminal and commercial matters through negotiations; the ratification and implementation of numerous conventions on legal cooperation in criminal matters, the Hague Convention on Private International Law, conventions related to the protection of children; accession to relevant UN and OSCE documents and closer cooperation with Eurojust [13, pp. 19-27]. "Justice, freedom and security" - this is the name of one of the chapters of the Association Agreement, which provides for respect for human rights and fundamental freedoms, which will be the basis for cooperation. In this sense, the principle of the rule of law consists of an independent judiciary, access to justice for citizens and the right to a fair trial [3, p. 30], which are not possible without equal access to legal assistance. The standards set out in international documents are also benchmarks for the Republic of Moldova.

The author notes that the main distinguishing feature of the state-guaranteed legal assistance system created in the Republic of Moldova in 2007 is the presence of a specialized state body - the CNAJGS, which manages the process of granting legal assistance at the second level of decision-making, in collaboration with the Bar Association [29, p. 137]. At the first level of decision-making, the system is managed by the Ministry of Justice, and at the third level - by the territorial offices of the CNAJGS, headed by coordinators. This management model allows the system to effectively solve the tasks assigned to it.

The national system of state-guaranteed legal assistance uses a mixed model of service delivery, in which various providers operate. The use of a mixed model for the delivery of state-guaranteed legal assistance allows the choice of the best ways to provide legal assistance, taking advantage of the potential of all existing legal service providers.

The quality of state-guaranteed legal assistance is ensured by establishing appropriate procedures for the selection of legal service providers, their professional training, the introduction of appropriate quality standards for the services provided, and the monitoring and evaluation of the activities of entities providing state-guaranteed legal assistance.

Evaluating the national system of state-guaranteed legal assistance from the perspective of the efficiency of the management model, sustainability and ensuring the

completeness and quality of the services provided through the prism of the analyzed international standards, the author finds that it largely corresponds to these standards. However, national legislation does not provide sufficient guarantees against excessive judicial intervention in the process of granting state-guaranteed legal assistance.

In this chapter, the author also defines the concept of "state-guaranteed legal assistance system".

Chapter 3 "International Criteria and Characteristics of the Granting of State-Guaranteed Legal Assistance Depending on the Regulated Field of Social Relations" in the first section identifies the areas and defines the criteria for granting state-guaranteed legal assistance. The second section of the chapter analyzes the criteria for granting free legal assistance to socially vulnerable persons in criminal proceedings and summarizes international experience in their application. The third section describes and analyzes the conditions for granting ex officio legal assistance and for recovering legal assistance costs established by international standards. The fourth section describes the criteria and international experience in granting state-guaranteed legal assistance in civil proceedings. The fifth section contains the author's conclusions on the materials presented in this chapter.

The author notes, in particular, that the criteria for granting state-guaranteed legal assistance are one of the most important elements of it, ensuring the efficiency of this institute.

According to international standards, the right to free legal assistance is not absolute. The standards establish financial and subject matter criteria for the granting of such assistance, which must exist simultaneously.

The establishment of the poverty line in defining the financial criterion is attributed by international standards to national authorities, which must provide sufficient guarantees that this criterion is not arbitrarily defined.

The substantive criterion for granting free legal assistance in criminal proceedings is elaborated in detail by the ECHR and the HRC. It is defined by the severity of the offense and the severity of the threatened punishment; the legal or factual complexity of the case; the social and personal situation of the person, which deprives them of the possibility of defending themselves on their own. And in civil proceedings, the Contracting Parties must themselves decide how to fulfil the obligations to ensure a fair trial, which arise from Article 6(1) of the Convention, and to establish the selection criteria for cases for which free legal assistance may be granted.

The analysis of international practice in the granting of free legal assistance in civil proceedings has allowed the author to highlight an approach applied by some states,

which makes the right to free legal assistance dependent on certain personal qualities of the subject who requests it. This approach, not described in the literature, is called by the author "personal criterion".

Ex officio legal assistance is not provided for by the main international human rights documents. The provisions concerning it were formulated by the ECHR and the UN Human Rights Committee as a result of an extensive interpretation of Article 6(1) of the Rome Convention and Article 14(1) of the ICCPR, and first appeared in the Statute of the UN International Criminal Court. International courts distinguish ex officio legal assistance from free legal assistance for low-income persons and leave it to the discretion of national authorities to establish the criteria for its granting, which are obliged to ensure a fair trial. According to international standards, the costs of providing ex officio legal assistance in criminal proceedings, in the event of a person's conviction of an offense, may be recovered from the person at the end of the proceedings, if they have sufficient means to cover them, if this is provided for by national law.

The criteria for granting state-guaranteed legal assistance analyzed in Chapter 3 were taken as the basis for evaluating the national system.

Chapter 4 "Criteria and Procedures for Granting State-Guaranteed Qualified Legal Assistance", which consists of five sections, analyzes all the grounds and procedures provided for by the current legislation for granting such aid in all types of judicial proceedings, the grounds and procedures for refusing it and for recovering the costs of providing legal services. The situations that arise in the field of practice were studied, described and analyzed, the most significant gaps in the legislation and shortcomings in the applicable practice were identified, which require elimination.

The author notes that the main purpose of the functioning of the state-guaranteed legal aid system in the Republic of Moldova is to ensure equal access to justice by reducing the financial and economic barriers to obtaining legal assistance by poor and socially vulnerable persons. The legislation of the Republic of Moldova provides broader guarantees for free legal assistance than international standards, including the possibility of obtaining it not only in criminal cases and not only for defendants, but also for all those who need it and meet the established criteria, regardless of the type of judicial proceedings. However, the lack of regulatory regulation of some procedural issues and the inefficiency of tax legislation creates some difficulties in the functioning of the system and conditions for abuse of the right to free legal assistance.

In certain cases, provided for by law, legal assistance is mandatory ex officio in the public interest. The current criteria for granting ex officio legal assistance in national

civil proceedings, in the author's opinion, fully correspond to the state's purpose of ensuring effective access to court and do not require any amendments or additions.

At the same time, the author notes that the conditions for the mandatory participation of a lawyer in criminal proceedings, established by national legislation, also fully correspond to international criteria. However, being a supporter of the idea expressed in Chapter 1 on the mandatory nature of legal assistance for all defendants in criminal cases, the author proposes to revise the national criteria in this regard. He believes that the mandatory participation of a lawyer for all defendants will correspond to the changed social values and the national legal tradition. This will create additional guarantees for a fair trial and will help to solve many problems in the functioning of the state-guaranteed legal assistance system.

At the same time, in order to overcome the procedural imbalance in ensuring the rights of the parties to the proceedings, which will inevitably arise as a result of the mandatory participation of the defense counsel in all criminal cases, the author considers it necessary to introduce the institution of mandatory legal assistance for victims of crimes, with the establishment of the criteria and procedure for its provision.

The legislation of the Republic of Moldova provides for the granting of qualified legal assistance, regardless of the beneficiary's income level, and in other cases, in addition to ex officio legal assistance, as provided for by law. In some cases, the legislator links this to the vulnerable position of the person. In others, it considers that the person does not *a priori* have sufficient resources to pay for legal services, so that a check on their financial situation is not necessary. Moreover, the list of cases in which qualified legal assistance must be provided, regardless of the income level, is constantly growing. However, some of the grounds for granting legal assistance, regardless of the income level, remain declarative and are not applied in practice. The lack of clear regulation of the procedure for applying for and granting legal assistance, regardless of the income level, leads to the fact that law enforcement agencies and the court sometimes confuse qualified legal assistance, provided regardless of the person's income level, with mandatory legal assistance, requesting it on their own initiative, without taking into account the person's wishes, and sometimes violating their right to choose their own defense counsel.

Therefore, the introduction of mandatory legal assistance for defendants in all criminal cases and for victims of crimes, in accordance with established criteria, will allow for the reduction of the excessively extensive list of subjective criteria for granting state-guaranteed legal assistance, regardless of the beneficiary's income level, and its limitation to mandatory legal assistance.

According to the Law on State-Guaranteed Legal Assistance, foreign citizens and stateless persons also have the right to qualified legal assistance, regardless of their income level, in cases related to granting asylum, expulsion and taking into public custody. The conditions for granting legal assistance to this category of persons, established by national legislation, correspond to international standards, however, its optional nature, taking into account the nuances of national legislation and law enforcement practice, makes it formal and little in demand. In this regard, in the author's opinion, in order to ensure a real, not declarative, right of these persons to a fair trial, it is necessary to enshrine in law their right to mandatory legal assistance in cases of this category.

State-guaranteed qualified legal assistance, in accordance with the current legislation, can also be provided to legal entities brought to justice in criminal proceedings, which do not have a representative appointed in accordance with the requirements of the law. However, the lack of clear internal rules of the CNAJGS, concerning the procedure for applying for and appointing a lawyer, sometimes leads to errors and even abuses in the application of the law.

It is noteworthy that the effective functioning of the state-guaranteed legal assistance system requires a selective mechanism for providing assistance, due to limited resources. Qualified legal assistance is available only to those who meet the legal criteria, excluding certain categories of cases, in accordance with international standards. The right to challenge the refusal to grant legal assistance protects applicants.

Considering that state-guaranteed qualified legal assistance is paid for from funds allocated from the state budget, an urgent need is the creation of an effective mechanism for reimbursing the state for the costs incurred. However, the existing mechanism for reimbursing the costs of qualified legal assistance does not meet this requirement. The legislation does not regulate certain situations in which the need for reimbursement of legal assistance costs may arise in civil cases. The lack of internal regulations creates difficulties in the application of the law's provisions. And the CCP rules established for the recovery from convicted persons of the costs of providing mandatory legal assistance and the costs of providing state-guaranteed qualified legal assistance to victims of crimes and other participants in the proceedings do not function at all.

GENEGAL CONCLISIONS AND RECOMMENDATIONS

This dissertation analyzes the state-guaranteed legal assistance system existing in the Republic of Moldova. The important scientific problem solved consists in the

analysis and evaluation of the normative acts regulating the functioning of this system, as well as of the practice of their application, from the point of view of international standards, in order to establish the conformity of this system with these standards and to develop recommendations that can contribute to the improvement of the system and the increase of its efficiency.

As a result of the analysis of the doctrinal views of Moldovan and foreign researchers, as well as of international standards and criteria for granting state-guaranteed legal assistance, in combination with international experience in their application, the author has come to the following conclusions:

- Social relations in themselves concerning the granting of legal assistance are a manifestation of the essence of the modern rule of law [Chapter 1, 1.1, 1.2];

- The inability of a person, due to certain circumstances, to achieve a legitimate goal through his own efforts requires that the state guarantees that such a person receives legal assistance of adequate quality for the realization and protection of his rights [Chapter 1, 1.3, Chapter 2, 2.1, Chapter 3, 3.2, 3.4];

- In certain cases where the public interest prevails over personal interests, the state may compel a person, regardless of his or her wishes, to accept legal assistance, which in such cases becomes mandatory. At the same time, the state may provide for the possibility of recovering from the beneficiary of legal assistance the costs of providing such assistance, if he or she has sufficient means to pay for it. [Chapter 1, 1.4, Chapter 3, 3.3];

- There is also a scientific concept according to which, since defense in criminal proceedings is an interest of public order, this interest should be ensured by mandatory legal assistance in all criminal cases [Chapter 1, 1.4]. This concept is supported by some European countries, which have established in their legislation a rule according to which the defendant in criminal proceedings must be represented by a lawyer of his own choice or ex officio [Chapter 3, 3.3];

- States should establish appropriate systems for granting legal assistance to ensure that legal assistance is guaranteed [Chapter 2, 2.1, 2.2, 2.3];

The analysis of the way in which state-guaranteed legal assistance systems are organized and function in different foreign countries has shown that:

- In order to ensure the efficient functioning of these systems, the tasks of organizing, coordinating, providing and monitoring state-guaranteed legal assistance should be entrusted to specific bodies, whether state or private, existing or specially created for this purpose. These bodies should be independent of the intervention of

third parties in the decision-making process and should have the necessary competence [Chapter 2, 2.2];

- In order to ensure the stable and efficient functioning of state-guaranteed legal assistance systems, appropriate mechanisms for the provision of legal services must be created and providers of such services capable of providing quality legal assistance must be involved. [Chapter 2, 2.3];

- An important element of the state-guaranteed legal assistance system is the criteria for granting assistance, since, given the limited resources, without a mechanism for selecting cases, no such system can be efficient [Chapter 3, 3.2, 3.3, 3.4];

Based on the materials studied and analyzed, the author has defined the state-guaranteed legal assistance system. In a narrow sense, it represents a set of bodies and subjects acting on the basis of the law and empowered to manage the process of granting state-guaranteed legal assistance and to provide it directly. In a broad sense, it represents an integral part of the constitutional and legal system of the modern democratic state, consisting of a set of legal bases and mechanisms for implementing the right to state-guaranteed legal assistance, through which the state eliminates financial and economic barriers to free and equal access to justice and ensures the protection of public interests in its exercise. [Chapter 2, 2.8].

After studying and analyzing the criteria for granting state-guaranteed legal assistance established by international documents and applied in different countries, the author has identified, in addition to the described financial and substantive criteria, a "personal criterion" that conditions the granting of legal assistance on certain personal qualities of the subject who requests it. This criterion can be applied both in combination with the financial and substantive criteria and independently of them [Chapter 3, 3.4, 3.5].

The analysis and evaluation of the national system of state-guaranteed legal assistance, carried out within the framework of the research, allowed the conclusion that, from the point of view of the efficiency of resource management, processes and tasks, the chosen models of system management and service delivery correspond to international standards and best foreign practices. However, the national legislation does not provide sufficient guarantees against excessive judicial intervention in the process of granting state-guaranteed legal assistance [Chapter 2, 2.8].

Evaluating the criteria established by national legislation for granting free legal assistance to low-income persons, the author came to the conclusion that they fully correspond to international standards. However, the insufficient regulatory regulation of

some procedural aspects does not allow for the effective application of these criteria and the use of best foreign practices [Chapter 4, 4.1, 4.2.3, 4.5].

The existing criteria for granting ex officio legal assistance in national civil proceedings fully correspond to the purpose of ensuring effective access to court [Chapter 4, 4.2.2]. However, the same cannot be said about the criteria for granting ex officio legal assistance in criminal proceedings, which, although they correspond to international standards, do not fully ensure, in the author's opinion, the protection of public interests and contradict the changed national legal tradition, which requires the mandatory provision of legal assistance in all criminal cases [Chapter 4, 4.2.1].

In addition, as the study has shown, the problems of the functioning of the state-guaranteed legal assistance system in the Republic of Moldova are:

- The constant increase in the number of personal criteria for granting qualified legal assistance, regardless of the income level of the beneficiaries, often declarative and without practical application, complicating the system and its administration [Chapter 4, 4.2.3];

- The insufficient regulation, including internal regulation, of the procedure for refusing to grant qualified legal assistance guaranteed by the state contributes to the misapplication of the legislation [Chapter 4, 4.3];

- Shortcomings in the practical provision of state-guaranteed qualified legal assistance to other participants in criminal proceedings, in addition to the suspect, accused, defendant, which leads to a procedural imbalance in ensuring the rights of the participants in the proceedings [Chapter 4, 4.1];

- The shortcomings of the normative regulation, including the internal regulation, of the procedure for recovering the costs of providing legal assistance in general, as well as the lack of an adequate normative regulation of the institution of recovering the costs of state-guaranteed qualified legal assistance in criminal cases, in particular [Chapter 4, 4.4].

Thus, within the framework of the research carried out, the hypothesis formulated by the author has been fully confirmed.

Based on the research carried out and the theoretical conclusions obtained, the following practical proposals have been formulated, aimed at optimizing the state-guaranteed legal assistance system and reducing budget expenditures for it:

1. It is necessary to establish by law the mandatory nature of legal assistance for all persons who are brought to justice in criminal proceedings. If such a person has benefited from mandatory legal assistance at the expense of the state, then, in the event that he or she is found guilty, he or she is obliged to recover the costs of providing such

assistance, if he or she does not prove that he or she does not have sufficient means to pay for legal services, as well as the costs of providing legal assistance to the victim of the crime. For this purpose, we consider it necessary to introduce the following amendments to the Criminal Procedure Code of the Republic of Moldova:

a) it is proposed to formulate Article 17 of the CCP in the following wording:

"Article 17. Legal assistance in criminal proceedings

(1) Throughout the criminal proceedings, the parties (suspect, accused, defendant, convicted, injured party, civil party, civilly liable party) have the right to be assisted or, as the case may be, represented by a chosen defense counsel or by a lawyer providing state-guaranteed legal assistance, under the conditions of the law.

(2) Legal assistance is mandatory for the suspect, accused, defendant, convicted person throughout the criminal proceedings.

(3) Legal assistance is mandatory for the victim and the injured party throughout the criminal proceedings in cases of domestic violence; crimes against sexual life; torture, inhuman or degrading treatment; trafficking in persons, as well as if the victim or the injured party is a minor. The investigating body and the prosecutor, at the request of the victim or the injured party, or on their own initiative, by a reasoned order, and the court - by a decision, may declare legal assistance mandatory for the victim or the injured party also in cases of other crimes, if they establish that the victim or the injured party is not in a position to defend his or her interests on his or her own.

(4) If the suspect, accused, defendant, convicted person, as well as the victim or the injured party, for whom legal assistance is mandatory, does not wish or is not able to benefit from the services of a chosen defense counsel, or abuses the right to choose a lawyer, delaying the proceedings, at the request of the investigating body or the court, a lawyer is appointed to provide state-guaranteed qualified legal assistance. The delegation of the appointed lawyer ceases upon the entry of the chosen defense counsel into the case.

(5) If legal assistance to the parties in the proceedings was provided by a lawyer providing state-guaranteed legal assistance, the costs of such assistance shall be recovered in the order provided for by Law No. 198 of 26.07.2007. For this purpose, an electronic copy of the decision adopted in the case after it has become final shall be transmitted to the territorial office of the National Council for State-Guaranteed Legal Assistance, which designated the lawyer who participated in the case. At the same time, the body that adopted the decision shall inform the territorial office of the surname, first name, personal code and residence of the person found guilty of the crime (or place of detention), marital status and the number of persons maintained by him or her, or the

surname, first name and personal code of the person who, under the law, may be liable for property damages.

b) it will also be necessary to bring the other provisions of the code into line with this norm.

2. A similar provision should also be introduced into the Code of Contraventions, providing for the mandatory nature of legal assistance for persons brought to justice for contraventions for which the law provides for a penalty of arrest, and for victims of certain types of contraventions, taking into account their emotional involvement and vulnerable position, as well as the obligation of the person found guilty to reimburse the costs of legal assistance.

These changes will assign to the competence of the law enforcement bodies the verification of the existence of the substantive and subjective criterion for granting state-guaranteed qualified legal assistance in criminal and contravention cases, and the financial criterion will not be relevant at the time of granting legal assistance, which will simplify and accelerate the procedure for appointing a lawyer. At the same time, the grounds for intervention by the investigating bodies and the courts in the activities of the territorial offices coordinators of the National Council will be eliminated.

The verification of the financial criterion will be carried out after the conclusion of the proceedings. If the person found guilty is able to pay for the state-guaranteed qualified legal assistance provided to him or her, the costs of such assistance shall be recovered in the same way as they are currently recovered in civil cases from the party who lost the case. The costs of providing legal assistance to the victim of the crime (contravention) shall be recovered from the guilty person unconditionally.

3. It is necessary to introduce appropriate amendments and additions to art. 84¹³ of the Law on the Legal Status of Aliens in the Republic of Moldova and to paragraph (6) of art. 55 of the Law on Asylum in the Republic of Moldova, and to establish the mandatory nature of legal assistance for aliens and stateless persons in cases of return and declaration as an undesirable person, and in cases related to such cases of taking into public custody; as well as in cases of granting asylum, if the applicant requests such assistance. The costs of legal assistance in such cases should be borne by the state.

4. It is necessary to arrange for the reimbursement of costs for providing state-guaranteed qualified legal assistance in civil cases. To achieve this, it is necessary:

a) to introduce appropriate additions to art. 96 of the Civil Procedure Code, and to oblige the courts, in cases where qualified legal assistance guaranteed by the state has been provided in the case, after the decision pronounced in the case has become final, to transmit an electronic copy of this decision to the CNAJGS which designated the

lawyer, with simultaneous information about the surname, first name, personal code and residence of the person who lost the case;

b) to introduce appropriate amendments to art. 97 of the Civil Procedure Code, providing that, in the event of a settlement, the party to the proceedings shall be obliged to recover the costs of providing state-guaranteed qualified legal assistance to the other party who was provided with such assistance.

5. Taking into account the above recommendations, it is necessary to introduce amendments and additions to the rules of the Law on State-Guaranteed Legal Assistance, which define the circle of persons entitled to qualified legal assistance (art. 19), the procedure for granting such assistance (art. 25) and the procedure for recovering its costs (art. 23 and art. 23¹).

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ADNOTARE

Suhov Vadim. „Sistemul de asistență juridică garantată de stat în Republica Moldova”. Teza de doctor în drept. Specialitatea: 552.01 - Drept constituțional. Chișinău, 2024

Structura tezei: introducere, 4 capitole, concluzii, bibliografie din 475 de surse, 188 de pagini de text principal, 2 tabele, 3 figuri. Rezultatele obținute sunt publicate în 30 de lucrări științifice.

Cuvinte cheie: asistență juridică gratuită, asistență juridică garantată de stat, acces la justiție, criteriile de acordare, standarde internaționale, asistență juridică obligatorie, dreptul la apărare, sistem de asistență juridică.

Scopul lucrării: analiza cuprinzătoare și evaluarea sistemului de asistență juridică garantată de stat din Republica Moldova din perspectiva opiniilor doctrinare și standardelor internaționale pentru identificarea domeniilor problematice și a neregurilor.

Obiectivele studiului: analiza situației științifice în domeniul cercetării în cadrul doctrinei internaționale și naționale pentru înțelegerea stării actuale; studierea detaliată și analiza standardelor internaționale referitoare la dreptul la asistență juridică garantată de stat, cu scopul identificării punctelor de referință pentru evaluarea sistemului național; analiza științifică, normativă și practică a organizării funcționării sistemelor de asistență juridică garantate de stat la nivel internațional și național; elaborarea definiției "sistemului de asistență juridică garantat de stat" pentru a defini clar obiectul cercetării și pentru a asigura o înțelegere comună; analiza detaliată a criteriilor internaționale și a caracteristicilor acordării asistenței juridice garantate de stat în funcție de domeniile relațiilor sociale reglementate pentru identificarea diferențelor și asemănarilor în practica națională; studiul detaliat și analiza condițiilor și procedurilor de acordare a asistenței juridice garantate de stat în Republica Moldova în lumina criteriilor internaționale și identificarea problemelor juridice și instituționale care afectează procesul de acordare a acestora; elaborarea propunerilor de modificare a legislației în scopul îmbunătățirii sistemului de asistență juridică garantate de stat.

Noutatea și originalitatea științifică a lucrării sunt determinate de analiza cuprinzătoare și evaluarea sistemului existent de asistență juridică garantată de stat din Republica Moldova, prin prisma ideilor doctrinare și a standardelor internaționale; identificarea circumstanțelor care creează dificultăți în funcționarea sistemului și a factorilor care împiedică accesul complet și neîngrădit la această asistență; elaborarea căilor optime de depășire a dificultăților identificate și îmbunătățirea funcționării sistemului.

Problema științifică importantă soluționată constă în analiza și evaluarea actelor normative care reglementează funcționarea sistemului de asistență juridică garantată de stat, precum și practica lor aplicată, din perspectiva standardelor internaționale și elaborarea unor recomandări care ar putea contribui la optimizarea sa.

Semnificația teoretică și valoarea aplicată a lucrării se exprimă în concretizarea standardelor internaționale teoretice generale referitoare la asistența juridică garantată de stat; identificarea problemelor teoretice și practice privind funcționarea sistemelor de asistență juridică garantată de stat în Republica Moldova, analiza și evaluarea acestora în contextul standardelor menționate anterior; formularea propunerilor concrete, fundamentate pe rezultatele cercetării, pentru îmbunătățirea legii; posibilitatea utilizării materialelor de cercetare și a concluziilor și recomandărilor formulate în activitatea normativă și aplicativă a dreptului, precum și în procesul educațional în pregătirea cadrelor juridice..

Implementarea rezultatelor științifice: Rezultatele activității științifice pe diverse aspecte ale tematicii acestei teze au fost prezentate la mai multe conferințe internaționale și naționale, publicate în reviste științifice, care au contribuit la îmbogățirea fundamentelor teoriei funcționării sistemelor de asistență juridică garantată de stat.

АННОТАЦИЯ

Сухов Вадим. «Система юридической помощи, гарантируемой государством, в Республике Молдова». Диссертация на соискание ученой степени доктора права. Специальность: 552.01 – Конституционное право. Кишинэу, 2024 г.

Структура диссертации: введение, 4 главы, заключение, библиография из 475 источников, 188 страниц текста работы, 2 таблицы, 3 рисунка. Полученные результаты опубликованы в 30 научных работах.

Ключевые слова: бесплатная юридическая помощь, гарантируемая государством юридическая помощь, доступ к правосудию, критерии предоставления, международные стандарты, обязательная юридическая помощь, право на защиту, система юридической помощи.

Цель работы: комплексный анализ и оценка существующей в Республике Молдова системы юридической помощи, гарантируемой государством, с точки зрения доктринальных мнений и международных стандартов для выявления проблемных областей и несоответствий.

Задачи исследования: анализ научной ситуации в области исследования в рамках международной и национальной доктрин для понимания текущего состояния; углубленное изучение и анализ международных стандартов, относящихся к праву на юридическую помощь, гарантируемую государством, с целью выявления ориентиров для оценки национальной системы; научный, нормативный и практический анализ организации функционирования систем юридической помощи, гарантируемой государством, на международном и национальном уровнях; выработка определения «системы юридической помощи, гарантируемой государством» для четкого определения объекта исследования и обеспечения единого понимания; детальный анализ международных критериев и особенностей предоставления гарантируемой государством юридической помощи в зависимости от области регулируемых социальных отношений для выявления различий и сходств в национальной практике; углубленное исследование и анализ условий и порядка предоставления гарантируемой государством юридической помощи в Республике Молдова сквозь призму международных критериев и выявление правовых и институциональных проблем, влияющих на процесс ее предоставления; разработка предложений по изменению законодательства с целью усовершенствования системы юридической помощи, гарантируемой государством.

Новизна и научная оригинальность работы определяются всесторонним изучением и оценкой существующей в РМ системы юридической помощи, гарантируемой государством, сквозь призму доктринальных идей и международных стандартов; выявлением обстоятельств, создающих трудности для функционирования системы, и факторов, препятствующих полной и беспрепятственной доступности данной помощи; выработкой оптимальных путей преодоления выявленных трудностей и улучшения функционирования системы.

Решенная важная научная проблема заключается в анализе и оценке нормативных актов, регулирующих функционирование системы гарантируемой государством юридической помощи, а также практики их применения, с точки зрения международных стандартов и в выработке рекомендаций, которые могут способствовать ее оптимизации.

Теоретическая значимость и прикладная ценность работы выражаются в конкретизации общетеоретических международных стандартов, относящихся к гарантируемой государством юридической помощи; выявлении теоретических и практических проблем функционирования систем гарантируемой государством юридической помощи в РМ, их анализе и оценке сквозь призму вышеуказанных стандартов; внесении конкретных, обоснованных результатами исследования предложений *de lege ferenda*; в возможности использования материалов исследования и сформулированных выводов и рекомендаций в нормотворческой и правоприменительной деятельности, а также в учебном процессе при подготовке юридических кадров

Внедрение научных результатов: Результаты научной деятельности по различным аспектам темы данного диссертационного исследования были представлены на нескольких международных и национальных конференциях, опубликованы в научных журналах, что способствовало обогащению основ теории функционирования систем юридической помощи, гарантируемой государством.

ANNOTATION

Sukhov Vadim. "The system of state-guaranteed legal assistance in the Republic of Moldova". PhD thesis in law. Specialty: 552.01 - Constitutional law. Chisinau, 2024

Thesis structure: introduction, 4 chapters, conclusion, bibliography from 475 sources, 175 pages of the text of the work, 2 table, 3 figures. The results obtained are published in 30 scientific papers.

Key words: free legal assistance, state-guaranteed legal assistance, access to justice, criteria for provision, international standards, ex officio legal assistance, right to defence, legal assistance system.

Purpose of the thesis: comprehensive analysis and evaluation of the existing state-guaranteed legal assistance system in the Republic of Moldova from the perspective of doctrinal opinions and international standards to identify problematic areas and discrepancies.

Objectives of the study: analyzing the scientific situation in the field of research within international and national doctrines to understand the current state; in-depth study and analysis of international standards related to the right to state-guaranteed legal assistance to identify benchmarks for evaluating the national system; scientific, normative, and practical analysis of the organization of state-guaranteed legal assistance systems at the international and national levels; developing the definition of "state-guaranteed legal assistance system" to clearly define the research object and ensure a common understanding; detailed analysis of international criteria and features of providing state-guaranteed legal assistance depending on the areas of regulated social relations to identify differences and similarities in national practice; in-depth study and analysis of the conditions and procedures for providing state-guaranteed legal assistance in the Republic of Moldova through the prism of international criteria and identifying legal and institutional problems affecting the provision process; developing proposals to amend legislation to improve the state-guaranteed legal assistance system.

The novelty and scientific originality of the work are determined by the comprehensive examination and assessment of the existing system of state-guaranteed legal assistance in the Republic of Moldova, through the prism of doctrinal ideas and international standards; the identification of circumstances that create difficulties in the functioning of the system and factors that hinder full and unimpeded access to such assistance; the development of optimal ways to overcome the identified difficulties and improve the functioning of the system.

Solved important scientific problem consists of analysing and evaluating the regulatory acts governing the functioning of the state-guaranteed legal assistance system, as well as the practice of their application, from the perspective of international standards and in developing recommendations that could contribute to its optimization.

Theoretical significance and applied value of the thesis are expressed in the concretization of general theoretical international standards relating to state-guaranteed legal assistance; identification of theoretical and practical problems regarding the functioning of state-guaranteed legal assistance systems in the Republic of Moldova, their analysis, and evaluation in the context of the aforementioned standards; formulation of concrete proposals, based on research results, for legal improvement; the possibility of using research materials and the formulated conclusions and recommendations in normative and applied legal activities, as well as in the educational process in training legal professionals.

Implementation of scientific results: The results of scientific activity on various aspects of the topic of this dissertation research were presented at several international and national conferences, published in scientific journals, which contributed to the enrichment of the foundations of the theory of functioning of state-guaranteed legal assistance systems.

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SUHOV VADIM

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REPUBLICA MOLDOVA**

Specialitatea: 552.01 – Drept constituțional

Rezumatul tezei de doctor în drept

CHIȘINĂU, 2024

SUKHOV VADIM

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552.01 – CONSTITUȚIONAL LAW

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