

CONSTITUTIONALIZATION OF ASSISTANCE IN FOREIGN COUNTRIES

CONSTITUCIONALIZACIÓN DE LA ASISTENCIA EN PAÍSES EXTRANJEROS

Sergey A. Ivanov¹, Aleksej N. Nifanov², Nina V. Stus³, Vladimir V.
Tabolin⁴, Elena E. Vlasenko⁵

^{1, 2, 3, 5} *Belgorod State University, 85 Pobedy St., Belgorod, 308015,
Russia*

⁴ *State University of management, 99, Ryazansky prospect, Moscow,
109542, Russia*
E-mail: nif@list.ru

abstract

Legal Profession in Russia has taken a category of assistance from constitutional level on a large scale and in different aspects. Significant improvement in characteristics of legal phenomena is a comparative jurisprudence method, and so, there is no exception to the assistance that has been declared in the species diversity of constitutional norms. In this study, commonality of historical development stage was a basis for separation of focus group from Commonwealth countries of Independent States (CIS) constitutions. In this study, authors established a variety of recipients from state aid, individual and collective, as well as a distinctly different legal nature; and prevalence of rules reflecting assistance as a subjective truth against the guarantee norms. This research was carried out as a RFBR project No. 19-011-00720 entitled "Development of Scientific Foundations of Legal Urbanology as a New Integrated Direction in Legal Science of Cities".

Keywords: Constitution, State Assistance, Legal Assistance, Subjective Law, Legal Guarantee.

Introduction

The categories of guarantee, protection, and etc., generally recognized in science, require a fundamental review in the context of the modern development of society and the state (Donnelly, 2013; Losilkina et al, 2018; Nifanov A.N., Sushkov, 2016; Kālin et al, 2009). As well as, the presented theoretical series is able to supplement by a constitutional-established category of assistance (Ivanov & Nifanov, 2017; Nikonova et al., 2017).

A significant improvement in characteristics of legal phenomena is a comparative law method. It also can be used to compare various legal systems or their components (Zivs, 1964). So, there is no exception to assistance that has been declared in the species diversity of constitutional norms. In this study, commonality of the historical development stage was a basis for separation of the focus group from CIS countries constitutions.

Research Methodology

This research was a dialectical approach to study of legal phenomena and processes, using general scientific (system, logical, analysis and synthesis) and private scientific methods. Among them, formal legal, linguistic legal, comparative legal are latter, which were collectively used to study the constitutional texts of countries in the Commonwealth of Independent States.

Results and Discussion

Analysis of CIS countries constitutions made it possible to draw a conclusion on formalization of diverse approaches norms of assistance, and its types in sectorial and substantive aspects.

Identified subjects of assistance can be divided into two private and public groups based on their legal nature.

In the first place, the government helps, for example, in large families (part III of article 34 of Constitution of Azerbaijan, 1995) children with physical and mental disabilities (part 3 of article 50 of Constitution of Moldova, 1994).

We know it interesting, but at the same time it is unclear, Part 1 of Article 50 from Moldova constitution, which has been provided for special assistance right for protection of mother and child. We believe that state is the subject of such special assistance, but this norm itself denies the assistance of different legal nature.

Family members have been identified as private aid providers. For example, Art. 38 of Constitution of Azerbaijan, is based on helping people who need their families which is fixed as a family member debt The help of children to their

parents, as well as those who replace them has been established by Art. 32 of Constitution of Belarus (1996).

Assistance of mature children to take care of their parents as a duty has been established by Art. 25 of Constitution of Tajikistan (1994).

According to the criteria for the assistance section, the following types were identified and became official in the constitutions of this group.

Medical care is the right of each person (Article 41 of Constitution of Azerbaijan).

The Constitution of Kazakhstan provides medical assistance in free versions. Thus, citizens of the Republic have the right to receive medical services guaranteed by law at no cost (part 2 of article 29, 1995)

Simultaneously, receiving paid medical care in public and private medical institutions, as well as from individuals engaged in private medical practice, has been made on the grounds prescribed by law (part 3 of article 29) (The Constitution of Kyrgyzstan, 2010).

It is noteworthy that Part 5 of Art. 24 of Constitution of Kyrgyzstan enshrined the help of a doctor to each detainee (The Constitution of Kyrgyzstan, 2010). Thus, Constitution of Kyrgyzstan, without providing universal medical care, has consolidated the original "doctor's help" in relation to the detainees.

There are numerous constitutional norms on such varieties as legal assistance (part 1 of article 64 of Constitution of Armenia, 1995) at any stage of legal proceedings (article 108 of Constitution of Turkmenistan, 1994) in court and investigation (article 92 of Constitution of Tajikistan) in the variants of qualified legal assistance for which everyone has the right (part I of article 61 of Constitution of Azerbaijan, part 3 of article 13 of Constitution of Kazakhstan, part 3 of article 40 of Constitution of Kyrgyzstan); free legal assistance at the expense of state (part II of article 61 of Constitution of Azerbaijan, part 1 of article 64 of Constitution of Armenia, article 62 of Constitution of Belarus, part 3 of article 13 of Constitution of Kazakhstan, part 3 of article 40 of Constitution of Kyrgyzstan).

We would like to clarify formulation of legal assistance combined to expression of subjective right associated with lawyers and legal aid, in these constitutions.

In Armenia, in order to ensure legal assistance, advocacy is guaranteed based on independence, self-government and equality of lawyers (part 2 of article 61 of Constitution).

In Art. 108 of Constitution of Turkmenistan, it is recognized that legal assistance to citizens and organizations is provided by lawyers, other persons and organizations.

In Part 5 of Art. 24 of Constitution of Kyrgyzstan, it has been shown that the real

deprivation of liberty, an individual has the opportunity to use qualified legal counsel assistance by a lawyer.

Art. 62 of Constitution of Belarus also stipulated that deployment, according to which everyone has the right to legal assistance in implementation and protection of rights and freedoms, like right to use of lawyers' assistance and other representatives at any time.

The same article prohibits deal with the presentation of legal assistance in the Republic of Belarus.

Specific Art. 39 of Constitution of Uzbekistan: the right to professional legal assistance has been guaranteed at any stage of the proceedings (Constitution of the Republic of Uzbekistan, 1992). The legal profession operates to provide legal assistance to citizens, enterprises, institutions and organizations.

According to Art. 92 of Constitution of Tajikistan, organization and organization and examination of the activities of legal profession and other forms of provision of legal assistance are determined by constitutional court.

It should be noted that these articles, contribute to particular case of the independent type of attorney assistance as a manifestation of legal assistance.

The declared independence is also confirmed by legal provisions on the assistance of a lawyer, which is the right of each person from detention, arrest, and accusation of committing a crime (Part III of Article 61 of Constitution of Azerbaijan, Part 3 of Article 16 of Constitution Kazakhstan).

Part 3 of Art. 26 of Constitution of Moldova, has been also referred to the assistance of a lawyer, and parties have the right to use, select or appoint the lawyer assistance.

Another form of industrial assistance provided by the constitution is economic. It seems like a public institution - a state. So, Art. 54 of Constitution of Kazakhstan, has been provided for economic and types of assistance and government loans of the Republic in resolving issues. As well as, this basic law has been formalized except for economic, assistance.

The Constitution of Moldova has been stated in the context of parliamentary control (Part I article 66) about economic and types of assistance and also agreements on government and foreign sources loans.

Under the authority of Majlisi Oli, with the consent to provide economic assistance to other countries has been set in paragraph 14 of Art. 49 of Constitution of Tajikistan.

Let us note that, unlike other types, economic assistance has been considered by the constitution of the group for other countries..

Isolated kind of social assistance is another point. This is a means to guarantee a standard of

living that is not below the minimum subsistence level in Art. 2.. 53 of Constitution of Kyrgyzstan.

Art. 39 of Constitution of Uzbekistan, contains provisions that pensions, allowances, and types of social assistance can not be lower than the minimum subsistence level.

We believe that the above formulations also assume the state is the subject of such assistance.

In constitutions declared group, the assistance of a translator has been stated in part H of Art. 127 of Constitution of Azerbaijan: Individuals, participants in a trial that does not know the language in which proceedings are conducted, and the right must be guaranteed to fully meet the case materials, and to participate in court with the help of an interpreter.

Findings

Thus, In the constitutions studied by CIS member states, various types of assistance can be determined on the basis of prior criteria that are not mutually exclusive.

About rendering:

- Public / state (part III of article 34 of Constitution of Azerbaijan, part 3 of article 50 of Constitution of Moldova);

- Private / family members, parents and children (Article 38 of Constitution of Azerbaijan, Article 32 of Constitution of Belarus, Article 25 of Constitution of Tajikistan).

With implementation dimensions:- Medical (article 41 of Constitution of Azerbaijan, part 2 of article 29 of Constitution of Kazakhstan);

- Legal (part I of article 61 of Constitution of Azerbaijan, part 1 of article 64 of Constitution of Armenia, part 3 of article 13 of Constitution of Kazakhstan, part 3 of article 40 of Constitution of Kyrgyzstan, article 108 of Constitution of Turkmenistan);

- Defender / lawyer (part III of article 61 of Constitution of Azerbaijan, part 3 of article 16 of t Constitution of Kazakhstan);

- Social (part 2 of article 53 of Constitution of Kyrgyzstan, article 39 of Constitution of Uzbekistan);

- Economic (part 1 of article 54 of Constitution of Kazakhstan, paragraph I of article 66 of Constitution of Moldova, paragraph 14 of article 49 of Constitution of Tajikistan).

According to the legal content of the constitutional norm:

- Legal guarantee (part 2 of article 61 of the Constitution of Armenia, part 2 of article 29 of Constitution of Kazakhstan);

- subjective right (article 41, part I article 61 of Constitution of Azerbaijan, article 62 of Constitution of Belarus, part 3 of article 13 of Constitution of Kazakhstan, part 3 of article 40 of Constitution of Kyrgyzstan, part 3 of article 26 of

Constitution of Moldova 39 of Constitution of Uzbekistan);

- Legal obligation (Article 38 of the Constitution of Azerbaijan, Article 25 of the Constitution of Tajikistan);

- Powers of public authorities (part I of article 66 of Constitution of Moldova, part 14 of article 49 of Constitution of Tajikistan)

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