



Ensuring human rights in accessing justice and equality before the law through Vietnam's legal aid policies and laws

Ho Trong Huu¹, Cao Van Cu²

¹ Lecturer, Faculty of Law, School of Humanities and Social Sciences, Vinh University, Vietnam

² Student, Faculty of Law, School of Humanities and Social Sciences, Vinh University, Vietnam

Abstract

In Vietnam, human rights, fundamental rights and obligations of citizens are always respected, guaranteed and recognized, institutionalized, gradually expanded and clearly delineated to ensure higher and strict implementation. more closely in the Constitution over time. To contribute to ensuring human rights and citizens' rights, including the right to access justice and equality before the law, the legal aid system was born, which is a deeply humane policy that helps the the subjects are people with meritorious services to the revolution, children, the poor, people with disabilities, people with financial difficulties, etc. to protect their legitimate rights and interests.

Keywords: legal aid; guaranteed; the right to access justice; equality before the law; policy; law

Introduction

Legal aid is a form of social welfare guaranteed by the State so that people who cannot afford to pay for their defense can access free legal aid services. The right to legal aid is a fundamental human right, within the scope of the right to access to justice, which forms the basis for the enjoyment of other rights, including the right to a fair trial, and is a measure of protection. important to ensure fundamental fairness and public confidence in the judicial process... The essence of the right to legal aid is an individual's legitimate ability to be guaranteed by the law, to have access to a system of free legal advice services, to be represented and to have a fair trial without having to pay legal fees.

The need for legal aid always exists in society and tends to increase; Therefore, if society is to respond by itself, there will be many problems arising from the diversity and complexity of subjects, objects, and nature of cases.

Legal aid beneficiaries are those who face certain difficulties, which are sometimes not due to the person himself; Without intervention and support, they cannot or rarely have the same opportunity as others in accessing justice.

The right to legal aid is a fundamental right, the State is the most suitable organization for meeting commitments, taking international legal responsibilities and using resources, as well as developing cooperative relations in the field of law. legal aid area. In addition, legal aid is an activity that is not directly profitable for the implementer. Without the intervention of the State, other subjects may not want to do or are unable to do so. to the sustainability of legal aid is limited.

The State's responsibility for legal aid has been recognized in international documents such as the 1948 Universal Declaration of Human Rights (Article 10), the 1966 International Covenant on Civil and Political Rights (Article 14), the 1981 Convention Against Discrimination against Women (Article 2), the 1982 International Convention on the Rights of the Child (Article 37), the International Convention on the Rights of Persons with Disabilities.

Method of research

Research work on the basis of Marxism - Leninism, Ho Chi Minh Thought, the views of the Communist Party and State of Vietnam on the state and law, on human rights and ensuring human rights, public rights people. In addition, Vietnam's perspective on building a socialist rule of law state of the people, by the people, for the people and international integration is also the theoretical basis of this research work.

The author uses the methodology of dialectical materialism and historical materialism to study issues related to the content of the article. Theory and practice of legal aid activities to ensure human rights in access to justice and equality before the law in Vietnam are studied in relation to international law.

Studying the movement in the development of legal aid activities to ensure human rights in accessing justice and equality before the law, thereby uncovering changing and changing trends in activities legal aid to ensure human rights in access to justice and equality before the law in Vietnam.

In addition, the article uses a number of different research methods depending on the content to be researched. In particular, analytical and synthetic methods are used throughout the article to analyze a number of theoretical issues about legal aid activities and the assurance of human rights in accessing justice and equality before the law in Vietnam. Analyze the provisions of Vietnamese law as well as the actual operation of institutions in the state apparatus in ensuring legal aid activities in order to ensure human rights in accessing justice and equality before law.

Analysis of some causes affecting legal aid activities to ensure human rights in accessing justice and equality before the law in Vietnam in order to propose some solutions to improve the quality of legal aid activities. legal help. In addition, the comparative method is used to compare a number of provisions of international law and Vietnamese law on legal aid and guarantee of human rights in access to justice and equality before the law.

Results and Discussion

Vietnam's viewpoints, policies and laws on legal aid to ensure the right to access to justice and equality before the law

Vietnam is a member of the United Nations, a member of the above-mentioned international conventions, so over the past time, Vietnam has constantly implemented its commitments to the contents recorded in the conventions, including the right to legal aid. Vietnam always considers legal aid as the responsibility of the State, and clearly stipulates its legal aid policy as: "... step by step ensure that all citizens in need receive legal aid, and be defended in criminal proceedings" ^[1]; "renovating mechanisms and policies to expand the target population, improve the quality of legal aid for the people, support those who need assistance, protect their legitimate rights and interests, ensure justice and public justice, by society" ^[2] and "The State takes care of and ensures the provision of basic and essential public non-business services, improves the accessibility and quality of public administrative services for all classes of people on the basis of maintaining and developing better promote the leading role, key position, good nature, preeminent, non-profit operation of public non-business units" ^[3] (in which, legal aid is identified as an essential public non-business service). This regulation demonstrates the commitment of the State of Vietnam to the important social security policy in poverty alleviation in terms of legislation for those who cannot afford legal services in the market. The State performs its responsibilities through: (1) establishing a system of legal aid organizations of the State to ensure the initiative in meeting the needs of legal aid of the people; (2) ensure funding for legal aid activities ^[4].

The Government has identified legal aid as an essential public non-business service that is guaranteed by the state budget for recurrent expenditure and in the planning of the network of public non-business units under the scope of state management of the sector. Justice, from now to 2030, each province and city will have 01 state legal aid center in the provinces and cities to provide free legal services to legal aid beneficiaries under the Law on Legal Aid ^[5].

From the perspective of the Communist Party of Vietnam, over the past time, Vietnam has issued dozens of legal documents related to legal aid with the aim of ensuring people's right to access justice and equality before the law. Highlights include the following legal documents:

Vietnam's Criminal Procedure Code 2015 has recognized that a legal aid is an advocate, a defender of the legitimate rights and interests of the denounced, petitioned for prosecution, and the defender of the rights and interests of the accused, legitimate interests of victims and litigants. The Criminal Procedure Code also shares responsibility for performing defense according to the assigned judgment to the State Legal Aid Center. Accordingly, for persons eligible for legal aid are: The accused or defendants of crimes for which the Penal Code stipulates the maximum penalty frame is 20 years imprisonment, life imprisonment, death penalty; the accused has a physical weakness that cannot be defended; If a person has mental disabilities or is a minor, the Center must appoint a defense counsel for them according to the appointment of a competent procedure-conducting agency.

In addition, the Criminal Procedure Code stipulates the responsibility to notify, explain and ensure the exercise of

the right to legal aid: in cases where the accused or victim are eligible for legal aid, the agency or person competent to conduct procedures shall have to explain to them the right to receive legal aid; if they request legal aid, the agency or person competent to conduct the proceedings shall notify the State Legal Aid Center. The notice and explanation must be recorded in the minutes.

For the first time, in the Civil Procedure Code, the Law on Administrative Procedures, and the Law on Enforcement of Custody and Detention, the principles of ensuring the right to legal aid are strictly prohibited, and it is strictly forbidden to obstruct the right to receive legal aid, explain and guide persons held in custody or temporary detention and involved parties to know so that they can exercise their right to request legal aid in addition to continuing to affirm that legal aid workers and legal aid participants attorney to protect the legitimate rights and interests of the involved parties.

Vietnam's adoption of Laws guaranteeing the right to legal aid in the Laws, Procedures Law and Law on enforcement of custody and temporary detention in 2015 has affirmed the position and role of legal aid in law enforcement. social life, is an important tool to protect human rights and citizens' rights in accordance with the spirit of the 2013 Constitution. In line with the reform orientation of legal aid work, the task of providing legal aid in the legal field is the focus and a breakthrough stage of legal aid.

The right to equal treatment is one of the most important human rights. Equality manifests itself in many different areas, including equality in access to justice. However, in order to enjoy equal rights in access to justice, the state must have policies and laws to ensure them. The law on legal aid activities can be considered as one of the State's measures to ensure equal rights for everyone when accessing justice and the law. It is clear that people who receive legal aid as we know are a "weak" group in society, they cannot pay for regular legal services. They can only access and enjoy that right through legal aid activities of legal aid subjects. Legal aid cardholders carry out specific tasks such as providing legal advice, participating in legal proceedings, representing outside of legal proceedings, etc., protecting the legitimate rights and interests of legal aid beneficiaries, legal aid beneficiaries (the poor and other disadvantaged groups). Legal aid activities through such works of legal aid subjects have helped disadvantaged people to access the legal system as well as access justice equally as other subjects, help support law enforcement.

Some limitations on legal aid to protect human rights in access to justice and equality before the law in Vietnam

Although Vietnam has not stopped promulgating, amending and perfecting legal documents related to legal aid activities in order to ensure human rights in accessing justice and equality before the law. However, in reality, the legal system and practice of legal aid in Vietnam still have certain limitations. Specifically:

Firstly, the number of legal aid cases assessed by legal aid management agencies is not much, the quality management, inspection, appraisal and assessment of the quality of legal aid cases is still limited. has not been given due attention, has not been implemented regularly...

Secondly, the assessment of the quality of legal aid cases has not been done much, the agency in charge of assessing the quality and assessing the quality of legal aid cases does not have much experience in this work; A team of experts

has not yet been formed to assist the legal aid management agency in assessing the quality of the case.

Third, some Centers have not been paid attention to the arrangement of human resources in relation to their assigned tasks. Although the number of legal assistants increases every year, compared to the people's demand for legal aid, the current number of legal assistants is still small, which causes significant difficulties for the legal aid activities. carry out legal aid cases in densely populated places and areas with difficult access. A number of legal assistants have been transferred to work positions, and lawyers are a force capable of participating in legal aid activities, but they are concentrated mainly in big cities.

Fourth, the application of information technology and digital technology to legal aid activities is only at the beginning, not creating many advantages for people; The information technology infrastructure of the Legal Aid Department - the Ministry of Justice and the State Legal Aid Centers nationwide has been invested in many periods and in different ways, so there is a lack of synchronization.

Fifth, the communication on legal aid has not yet reached many people; people still have difficulty in accessing legal aid services.

Some solutions to improve the quality of legal aid activities towards ensuring human rights in access to justice and equality before the law in Vietnam

Firstly, the legal aid state management agency strengthens the assessment of the quality of legal aid cases and the effectiveness of legal aid cases to identify successful cases, identify those who are involved in legal aid cases. providing legal aid with high professional qualifications as well as a lot of experience can successfully solve complex cases. Since then, the state management agency in charge of legal aid has communication solutions on successful legal aid cases in order to enhance access to legal aid services, protect rights and interests. legal aid recipients as well as honoring organizations and individuals participating and contributing to legal aid work.

Secondly, the legal aid state management agency is interested in allocating appropriate resources for capacity building for the contingent of legal aid providers. In addition to basic vocational training knowledge, in order to be able to provide quality legal aid services, legal aid providers need to be equipped with a variety of professional and in-depth skills (legal counseling skills). law, skills to participate in legal proceedings in each field of law, skills to represent outside proceedings...). Diversify methods of capacity building: thematic training, seminars or other forms of experience sharing. The Department of Justice and the State Legal Aid Center need to strengthen the training and fostering of legal aid staff to create a source to appoint legal assistants for the Center pay attention to information technology infrastructure to deploy the implementation of the legal aid center component's participation in online court sessions, effective digital transformation in legal aid.

Third, on December 8, 2021, the Prime Minister issued Decision No. 2070/QĐ-TTg approving the planning of the network of public non-business units under the state management of the judiciary until the year 2020. 2025, orientation to 2030. Accordingly, the Legal Aid Center is an essential service provider that is not subject to a 10% reduction in the number of people working at non-business units receiving salaries from the state budget. Therefore, the People's Committees of the provinces and centrally-run

cities prioritize the arrangement and arrangement of the number of people working for the State Legal Aid Center on the basis of the surplus from the non-business units transferred to the State Legal Aid Center. to self-reliance, merger, dissolution, ensuring stability and sufficient resources to meet the legal aid needs of the people with quality ^[6].

Fourthly, local administrative agencies create conditions for funding for the operation of the State Legal Aid Center, funding for the implementation of legal aid content in the 03 National Target Programs implemented. locally.

Fifth, strengthen the coordination relationship with agencies, organizations and mass organizations, especially the agencies and persons conducting legal proceedings in the coordination of legal aid in legal aid activities. Strengthen the role of the inter-sectoral coordination council on legal aid at central and local levels in implementing regulations on legal aid coordination in proceedings.

Conclusion

Becoming a full member of the United Nations Human Rights Council in 2013 poses a challenge to human rights protection in Vietnam. In addition, the legal aid deployment model of the previous period still has many shortcomings and shortcomings, which cannot ensure the full implementation of the guidelines, guidelines and policies of the Party and State in the field of legal aid. in this area, directly affecting the quality of legal aid services of the people. Therefore, practice requires measures to reform legal aid work in the direction of improving capacity, strengthening the organization and apparatus of legal aid management agencies; strengthen state management in resource coordination, supervision and quality control of legal aid; provide financial support to agencies, organizations and individuals participating in legal aid activities; ensure quality and effective legal aid activities ^[7].

References

1. Communist Party of Vietnam, Document of the 12th National Congress of Deputies, National Political Publishing House, H, 2016, 167.
2. Resolution 49/NQ/TW dated June 2, 2005 on the Judicial Reform Strategy to 2020 and the 10th Congress (2006), XI Congress (2011), XII Congress (2016), Congress Congress XIII (2021) on judicial reform and judicial activities, 2005.
3. Ministry of Foreign Affairs, National Report on the protection and promotion of human rights in Vietnam under the Universal Periodic Review (UPR) cycle III, Hanoi 2018, 39-40.
4. Tran Thanh Minh - Promoting the role and position of legal aid in contributing to ensuring human rights and citizens' rights in accessing justice and equality before the law.
5. Central Executive Committee, Judicial Reform Steering Committee, Summary report on the implementation of the key program of judicial reform for the period 2011-2016; Proposed key program of judicial reform for the period 2016-2021, 27.
6. Nguyen Khanh - The Party's perception of ensuring human rights during the covid-19 pandemic. Legal protection magazine, 2020
7. Assoc. Prof., Dr. Tuong Duy Kien - Achievements in ensuring human rights in Vietnam in the process of building a socialist rule of law state. Party Building Magazine on 1/2/2023