

THE RIGHT TO PROFESSIONAL LEGAL ASSISTANCE AND ISSUES OF HUMAN RIGHTS PROTECTION

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Abstract

In the article, the right to professional legal assistance and the protection of human rights are widely analyzed based on the existing diversity of opinions in the legal literature and international practice. It is noted that professional legal assistance is recognized as an independent basic human right, which widely demonstrates its importance and necessity in the protection and promotion of human rights. Professional legal aid serves as a crucial mechanism to ensure the effective exercise of various human rights and to contribute to the overall realization of justice, equality, and the rule of law. The right to receive professional assistance has an irreplaceable role in the provision of legal equality and human rights. It is the violation of these rights that indirectly leads to the restriction of other human rights and freedoms, which is clear proof of the important place of the mentioned right in human rights.

Keywords: *legal aid, protection of human rights, right to equality, rule of law, rights and freedoms, norms of international law, legal services, justice.*

The right to receive professional legal assistance is distinguished by its special importance in ensuring human rights and freedoms. First of all, professional legal aid acts as one of the main guarantee mechanisms of the right to a fair trial as stipulated in international human rights documents. Also, defining and ensuring the right to receive professional legal assistance is considered one of the main steps that legal, democratic, and civilized states should take. Because professional legal assistance directly or indirectly affects the provision of basic human rights and freedoms. Therefore, ensuring the right to receive professional legal assistance is very necessary from the point of view of human rights and freedoms.

In one of the scientific studies conducted in the sphere of human rights, the right to receive professional legal assistance is presented as one of the basic human rights accepted at the international level regarding the impartiality of a person's justice [1]. It is possible to fully agree with this position. We also consider it necessary to mention that professional legal assistance should be considered as a basic human right in international human rights documents. Analysis of modern requirements and processes shows that the right to professional assistance is one of the main human rights of modern times. The provision of the right to professional assistance, as well as the provision of professional legal services to those in need, and the existence of state guarantees for this, show the urgency and importance of professional legal assistance in ensuring human rights. It should also be noted that the provision of professional legal assistance is closely related to a number of recognized human rights. That is, it is impossible to think about ensuring a number of human rights without providing professional legal assistance. Professionalism is considered essential for the effective exercise of these rights. The provision of professional legal assistance is considered the main component of these human rights and has a central position in this direction.

One of the main reasons why the right to professional legal assistance is recognized as one of the basic human rights in modern times is that it is related to the rule of law and the requirements of a civilized society. It is impossible to think that the right to professional legal assistance is not recognized and not guaranteed in any civilized, democratic state. This is due to the fact that the right to receive professional legal

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assistance is one of the main essential elements of ensuring the right to a fair trial, effective protection of rights and freedoms, and justice, as well as the right to equality before the law.

The right to a fair trial, which will be considered one of the constituent elements of the right to professional legal assistance, should be considered one of the most basic human rights. The right to a fair trial is rightly presented in the literature as a key element in the application of the rule of law, effective public administration, and impartial and correct administration of justice [2]. As can be seen, every state that is guided by the principles of democracy and the rule of law forms professional legal assistance mechanisms in the measures it takes, being interested in the impartiality and transparency of justice in this direction. In this way, it is possible to ensure the right to a fair trial. Professional legal assistance should be recognized as a key component of the right to a fair trial, enshrined in many international instruments. Professional legal assistance from various directions has various positive effects in the process of ensuring a fair trial. First of all, Article 10 of the Universal Declaration of Human Rights of 1948 and Article 6 of the European Convention on Human Rights of 1950 establish the right to a fair trial and determine that every person shall have both rights and duties there is also the right to have the claims and accusations brought in criminal cases heard by fair, impartial and open courts. The European Convention on Human Rights, approaching this right from a wide range, also defines the right to receive legal assistance free of charge based on the person's choice, as well as in cases where it is necessary to ensure justice if he does not have sufficient financial means to provide legal services [3]. Based on the norms established in international legal documents, we can note that if one of the main elements of the right to a fair trial is the presumption of innocence, another equally important component is the right to professional legal assistance. It is rightly noted in the literature that professional legal assistance is one of the main requirements for a fair and impartial trial [4]. Looking at the experience, it is possible to note that in the context of ensuring the right to a fair trial, the right to professional legal assistance basically means that the person accused of a crime has the opportunity to receive legal advice and assistance throughout the criminal trial process, the rights and duties of the person, the nature of the charges, potential defenses and various legal provides guidance on the consequences of options. It allows individuals to make informed decisions and understand the consequences of their choices.

It is noted in the legal literature that the creation of equal opportunities for the use of legal services is the basis for the fairness of the judicial system and the formation of public opinion in the direction of ensuring the rule of law in the state [5]. Indeed, professional legal assistance is extremely necessary in order for the parties to have equal opportunities, as well as to ensure that the person remains defenseless before the investigative authorities of the state in the criminal process. Legal consultation in the context of professional legal aid promotes the principle of equality of the parties, which aims to ensure a balanced and fair litigation process, and manifests itself as one of the mechanisms for ensuring human rights. By providing legal representation to the accused, they help to bridge the gap in opportunities between the prosecution and the defense and to equalize the situation between the prosecution and the defense. This enables accused persons to effectively challenge the case against them, cross-examine witnesses, and ensure their fundamental human rights.

The existence of requirements for the persons providing professional legal assistance in the defense of human rights and freedoms in justice to have special higher education, as well as to be qualified, confirms the importance of professional legal assistance as the main guarantee mechanism. Thus, the subject who provides professional legal assistance plays an important role in protecting the rights of the person to whom legal assistance is provided during the trial. When the persons provided with legal assistance are participants in the criminal proceedings, they can be informed about the accusations, evaluate the evidence, object to the accusation, and get extensive and detailed information about the material and procedural rights and duties established by the legislation in both criminal and other types of proceedings, and it is possible to obtain the evidence on their own. In cases where they are not, they get the opportunity to use the help of state authorities and get information about the results and prospects of the work. Professional legal aid entities also help protect the accused from potential violations of their rights during the trial. As mentioned in the literature, in this process, lawyers who provide professional legal assistance services appear as the main individuals who stand guard over the rule of law, and the main task and direction of activity of these subjects is the provision of human rights and freedoms, as well as the rule of law [6].

Lawyers who provide professional legal assistance services have an important role in ensuring human rights and freedoms. As a result of their activities in the context of the professional legal aid mechanism, the access of individuals to effective means of protection against violations of human rights and freedoms increases, and the process of rights protection and elimination of violations is accelerated. So, if we approach it as mentioned in one of the scientific studies, as a result of the activity of the subject providing professional legal assistance in justice, individuals are not deprived of their legal guarantees and the correct formation of legal results is achieved [7]. Based on their highly qualified education and experience, professional lawyers defend their rights and prevent violations by developing a legal strategy adapted to their case. They collect evidence, examine witnesses, object to the admission of evidence, and present legal arguments on behalf of defendants in criminal cases. Representation by a professional lawyer plays an important role in the persuasive presentation of the case of an accused or suspect in criminal proceedings. In other words, professional legal aid is essential to ensuring the fairness of the trial process by providing legal representation, advice, and support to individuals to effectively resolve their cases and challenge evidence.

In a word, by means of professional legal assistance, individuals have the opportunity to ensure the protection of their rights and freedoms, to actively participate in various processes, and to act in accordance with their legal interests in each process. Professional legal assistance facilitates the work of judges, who preside over cases in justice. Thus, the qualification of the persons providing professional legal assistance services allows them to convey the opinions and positions of the persons whose rights they defend more easily on the subject of justice. This is the basis for establishing effective communication, impartial and objective administration of justice. In short, a lawyer providing professional legal services contributes to the protection of human rights and freedoms, legal expectations, and the protection of the legal interests of individuals by providing effective legal representation.

As a result, one of the scientific studies has rightly stated that the right to professional legal assistance is a component of the right to a fair trial, and in many cases, the

latter right includes the content of the right to professional legal assistance [8]. We can say that most cases of violations of human rights and freedoms by states worldwide occur in places of detention and in the investigation process. Being subjected to the mentioned inhumane treatment occupies a unique place on the world agenda as one of the most important issues. From this direction, the right to professional legal assistance can be considered as a very important mechanism. The provision of professional legal assistance services can be considered as a safeguard against coercion, inhumane or harsh treatment, and abuse of power and privileges by representatives of public authorities during criminal proceedings.

For this reason, in the Principles adopted by the UN General Assembly, the right to legal aid is also established in the list of rights of a person arrested or deprived of liberty [9]. This is a clear indication of defining professional legal assistance as the main mechanism for ensuring the right not to be subjected to torture and inhumane treatment at the international level. Because the persons who provide professional legal assistance help the suspect, accused, or convicted person to be treated fairly and respectfully by law enforcement agencies, prosecutors, and the court by explaining their rights and duties, as well as by using complaint mechanisms in case of a violation of this guidance. In case of violation of the accused's rights or violations of the law, the subject providing professional legal assistance intervenes in the matter. Thus, professional legal assistance acts as a key decisive mechanism in the provision and protection of another human right.

The right to effective legal remedies is defined as one of the basic human rights in the main international documents defining human rights and freedoms. The right to effective remedies against human rights violations is recognized in international human rights law. Thus, the right to effective legal remedies is enshrined in Article 8 of the Universal Declaration of Human Rights dated 1948, Article 2 of the International Covenant on Civil and Political Rights dated 1966, and Article 13 of the European Convention on Human Rights dated 1950. , established in Article 47 of the Charter of Fundamental Rights of 2000, adopted within the framework of the European Union. The right to effective legal remedies determines the creation and operation of effective legal remedies in cases where human rights and freedoms are violated, regardless of who committed the violation (including violations by state authorities). Professional legal aid plays an important role in enabling individuals to seek appropriate remedies, such as compensation, restitution, or other forms of redress, for the human rights violations they have experienced. It helps individuals assert their rights, assert remedies, and seek legal remedies for harm.

Although access to justice is not explicitly defined as an independent human right, it is widely recognized as an important element of the rule of law and the effective protection of human rights. Thus, in the statement of the high-level meeting of the UN, equal access to justice was identified as a decisive element in ensuring the rule of law. Also, from this direction, legal aid was assigned to state services regarding the rule of law in ensuring effective management, providing legal aid under the condition of creating high-quality and equal opportunities from this direction was imposed as an obligation on the states [10]. In addition, in the international document adopted by the UN General Assembly, ensuring equal access to justice for victims of violations of international human rights and international humanitarian law is an obligation of the states [11]. Professional legal aid plays an important role in facilitating access to justice

by providing individuals, particularly those who are economically disadvantaged or marginalized, with the necessary assistance to navigate the legal system and defend their rights. This is an irreplaceable mechanism for individuals to defend their rights and freedoms.

Professional legal assistance has a very important role in ensuring the right to equality. So, it should be noted that equality manifests itself both as a human right and as a basic principle in various legal fields. The right to equality as one of the basic human rights and freedoms is established in the main international normative documents on human rights. This right includes equality before the law and the court. In this regard, it should be noted that according to the approach of the UN, professional legal assistance is also the main component of the right to equality. That is why legal aid is at the center of the agenda of goals that the UN aims to achieve by 2030. It is in one of the official sources of the UN that providing equal access to legal aid is considered an important issue for compliance with international human rights standards, as well as the protection of rights and freedoms at all times [12]. In one of the studies carried out in this direction, it was rightly noted that the international norm established in Article 14 of the International Covenant on Civil and Political Rights of 1966 imposes on the state the obligation to provide legal assistance to persons who have no financial means and who are involved in criminal proceedings. acts as the legal basis for guaranteeing the right to legal assistance [13]. The document adopted by the UN Human Rights Committee confirms this idea and defines Article 14 of the 1966 International Covenant as the legal basis for the right to professional legal assistance [14]. From the point of view of the right to equality, failure to provide professional legal assistance results in the violation of this right.

In the literature, the equality of every person before the law is determined by normative documents. However, not everyone has the same financial and social level. Thus, it is rightly stated that professional legal assistance can be efficient and effective only when approached in the context of equality law [15]. Because, when a legal dispute arises between people with different financial means, in many cases, those who have the means can use professional legal services, but those who do not have the financial means cannot use such services, and there is inequality between the parties in justice. On the other hand, when the rights of a person as an applicant are violated during administrative proceedings, in court proceedings where the administrative body is represented by professional lawyers, the person's lack of legal assistance can exclude equality before the court. This results in a violation of the right to a fair trial, access to justice, and the right to law and equality. This makes it necessary to provide free legal assistance not only in criminal cases but also in civil and administrative court proceedings.

The prohibition of all forms of discrimination leads to the guarantee of the right to equality. Cases of discrimination result in the violation of human rights and freedoms. Professional legal assistance is also very important in cases of violation of human rights through the application of discrimination. This manifests itself more in providing advice on the violated rights of these persons or defending them in court. Professional legal aid ensures equal access to justice for all people, regardless of their socioeconomic status and other characteristics. This helps mitigate the barriers that marginalized or economically disadvantaged individuals may face in seeking legal aid. Providing legal aid services to those in need helps to eliminate inequalities in access to justice and promotes equal treatment before the law.

In one of the rightly conducted analyses, it was noted that, in addition to the individual effect of protecting human rights and preventing violations, the provision of free legal aid to persons who have no opportunity to defend their rights in cases of discrimination also affects the change of the legal thinking of the society. However, some strata of the population living in poverty cannot afford such legal services, which reduces trust in the protection of human rights and freedoms and a fair trial in society. Professional legal assistance is necessary, especially in cases of discrimination [16]. Professional legal aid provides equal access to justice for all individuals, regardless of socioeconomic status or other characteristics, and helps overcome the legal and procedural barriers that marginalized or economically disadvantaged individuals may face and benefit from legal services in situations of discrimination. Providing legal aid services to those in need, it helps to eliminate inequalities in access to justice and promotes equal treatment before the law. In addition, professional legal assistance provided without any discrimination contributes to the reduction of discrimination in society and the promotion of human rights protection.

In other words, professional legal aid includes the opportunity for individuals to challenge discrimination and seek legal aid for human rights violations based on discriminatory grounds. Legal aid professionals help individuals understand their rights, identify discrimination and take appropriate legal action. This includes the effective use of procedural means to protect individuals' rights, challenge discriminatory practices, and seek redress.

Professional legal aid plays an important role in protecting the rights of vulnerable groups who are often discriminated against. Even denying professional legal assistance to a group of people due to discrimination based on the groups they belong to violates the right to a fair trial and the right to equality and non-discrimination. According to the legal position formed by the European Court of Human Rights, the denial of legal assistance to a migrant, because he is a migrant, is considered a violation of the rights of access to court and discrimination [17]. Legal aid services should include special support provisions for people from marginalized communities, such as victims of discrimination based on race, gender, disability, or any other characteristics. This helps to protect their rights and ensure their access to justice on an equal basis.

In the context of professional legal assistance, the discriminated persons should be given legal advice and, if necessary, legal representation should be carried out in relevant authorities or institutions, as well as in court. It gives individuals the chance to understand their rights, navigate legal processes and seek remedies for discrimination. Legal aid specialists can provide legal services to victims of discrimination in the direction of application of existing substantive and procedural legal norms, use of procedural legal means, collection of evidence, and effective presentation of claims in cases of discrimination.

We consider it necessary to note that in the context of professional legal aid activities, public relations, legal literacy programs, and educational campaigns should be organized frequently to raise awareness of discrimination and promote understanding of rights. As we mentioned, professional legal memory also includes the enhancement of legal knowledge. Awareness about signs of discrimination, legal and legislative norms in this area, and sanctions can have a positive effect on the promotion of human rights. It is also possible to change the legal thinking of society in a positive direction, to

reduce the number of violations of the law on discrimination, and to build an inclusive society through the implementation of the mentioned.

In general, professional legal aid contributes to the realization of the right to non-discrimination by ensuring equal access to justice, preventing discriminatory practices, and empowering individuals to defend their rights. It helps level the playing field, address systemic inequalities, and promote a more inclusive, just society.

Professional legal assistance, which takes its place as the main legal mechanism in the protection and provision of basic human rights, plays a very special role in ensuring the basic rights and freedoms of vulnerable groups. This group of people includes victims of domestic violence, refugees, internally displaced persons, children, disabled people, etc. can be attributed. Due to their circumstances and situation, these persons need more professional legal assistance. It is noted that one of the main components of a just society is the creation of equal opportunities for professional legal assistance and the provision of legal education to special vulnerable groups [18].

Professional legal assistance is especially important for protecting the rights of vulnerable groups such as victims of domestic violence, refugees, children, or the disabled. In order to ensure the protection of their rights and the fulfillment of their special needs, it is necessary to implement specialized support and representation activities. It contributes to the fulfillment of the human rights principles of dignity, equality, and non-discrimination.

It should be noted that among the principles established by the UN Human Rights Commission, it is determined that states should ensure that persons deprived of the capacity to act receive legal assistance to restore their rights and defend their claims. In addition, it was noted in the same publication that states should provide children with disabilities in all matters, and all persons with disabilities who have been subjected to violence, especially women and girls with disabilities, in all legal proceedings free of charge or in relation to violations of human rights or fundamental freedoms they must ensure the provision of efficient professional legal services [19].

As it can be seen, professional legal assistance is seen as one of the main mechanisms of securing or protecting basic human rights in various aspects. This increases the importance of professional legal assistance activities in modern times when the importance and necessity of human rights are increasing day by day. The role and importance of professional legal assistance in ensuring human rights and freedoms become more clear in these cases.

Here, another approach is to clarify the issue of including the right to professional legal assistance as one of the main human rights. So, is the right to professional assistance a mechanism for ensuring and protecting basic human rights? Or is professional legal assistance one of the basic human rights? Although there is no consensus on this in the literature, it should be noted that the right to legal aid is established in Article 61 of the Constitution of the Republic of Azerbaijan, which is included in the chapter called Basic human rights and freedoms. This suggests that in the Constitution of the Republic of Azerbaijan, the right to receive legal assistance is included in the category of basic human and civil rights. Thus, according to the content of that article, the provision of high-quality legal assistance is defined as the right of everyone. Also, from the content of this norm, it appears that a person has the right to use a defender from the moment when the right to freedom is restricted by state authorities.

In one of the scientific studies in which the right to professional legal assistance is treated as an independent human right in the literature, it was defined as the duty of civilized and democratic states to provide professional legal assistance as one of the basic human rights and not to require payment for these services if necessary (20). This should be taken as an opinion that indicates the importance of securing and protecting the right to professional legal assistance in countries where the rule of law and democratic principles are applied.

Also, in another analysis that emphasizes the importance of the right to professional legal assistance, it is noted that professional legal assistance is distinguished by its specificity and fundamentality. This right is so important that in some cases, failure to provide or protect it can reduce the importance of ensuring other human rights. This is mainly found in the process of ensuring human rights in the criminal process. In that literature, the position is that the right to receive professional legal assistance in international legal documents has been taken into account only as a component of the right to a fair trial [21]. It is also possible to agree with this idea. Only as mentioned in that scientific study, the importance of the right to receive professional legal assistance has increased in modern times. Thus, it acts as an independent right with its own characteristics. The fact that it is closely related to other human rights, and sometimes has the nature of a provision or protection mechanism, as well as the fact that it is defined in the content of the right to a fair trial in international normative legal documents does not exclude treating the right to professional legal assistance as a separate human right.

In another scientific study carried out in this direction, the right to professional legal assistance is presented as a means of guaranteeing independent human rights and freedoms, regardless of whether it is guaranteed together with other human rights [22]. It is also possible to accept the approach from this direction. Because, indeed, the professional assistance mechanism is considered as a legal mechanism with a particularly important role in the provision and protection of the above-mentioned basic human rights.

Thus, professional legal aid is recognized as an independent basic human right, which widely demonstrates its importance and necessity in the protection and promotion of human rights. Professional legal aid serves as a crucial mechanism to ensure the effective exercise of various human rights and to contribute to the overall realization of justice, equality, and the rule of law. The right to receive professional assistance has an irreplaceable role in the provision of legal equality and human rights. It is the violation of these rights that indirectly leads to the restriction of other human rights and freedoms, which is clear proof of the important place of the mentioned right in human rights.

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