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The Right to Receive Legal Assistance in Criminal Proceedings in Russia and in Foreign Countries

Elena A. Kupryashina

Belgorod National Research University, Belgorod, Russia

Dmitry V. Boev

Belgorod National Research University, Belgorod, Russia

Anna A. Gileva

Voronezh Institute of the Ministry of the Interior of Russia, Voronezh, Russia

Anzhelika I. Lyakhova

Belgorod National Research University, Belgorod, Russia

Sergey F. Shumilin

Belgorod law Institute of MIA of Russia named after I.D. Putilin, Belgorod, Russia

Abstract---The paper analyses the legislation of the Russian Federation and some foreign countries on the right of citizens to provide them with legal assistance in criminal cases, as well as the problems arising in its implementation. The paper also summarizes the experience of the studied countries in order to improve their legislation in this area of criminal justice. Methodologically, the work uses scientific methods of analysis and synthesis, as well as historical and comparative methods; all are given in an integrated approach. Among the conclusions, we underline the fact that some countries are introducing norms and tendencies from international law into their legal systems; the basic international principles of lawyer's activities, including principles for defenders, are fixed in the basic principles on the role of lawyers, which describe the right to receive free legal aid for those who are the poor; also that citizens have the right to choose a representative of their interests in the judiciary and have the opportunity to contact with their defenders at any time.

Keywords---criminal case, criminal procedure, defender, law principles, lawyer, legal adviser, legal proceedings, rights protection, suspect, victim, witness.

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Corresponding author: Kupryashina, E.A.; Email: kupryashina@bsu.edu.ru

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Introduction

According to the current legislation of many countries, everyone is guaranteed with the right to receive qualified legal assistance (Kuksin et al., 2019). Of course, citizens themselves are not always able to protect their rights due to the lack of an appropriate level of knowledge and mastering legal subtleties on various legal issues, the possibility of choosing tactics of behaviour, building a line of defence, since it is impossible to assess the legal situation on their own; an outside view is needed (Elena et al., 2017). Any person of any state is not immune from the fact that he or she will be a participant in an adversary criminal trial (criminal proceedings). Ordinary people who live their quiet lives may not know the laws of their country. But when they are faced with the fact that someone is restricting their rights and freedoms, or they are the one who violated other people's interests, they need legal assistance (Vyacheslav et al., 2021). It seems that a criminal lawyer should help everyone, regardless of who his client is. This gives an impetus to the development of a humane state, even in relation to a criminal, if a less severe punishment is imposed for the crime committed. The state, as it were, gives these persons a chance for a normal life. Special subjects, for example, children, should have the right to protection (Fesenko et al., 2017; Lai, 1998). Also, such persons as victims can restore their rights in a criminal case using legal assistance. Also, legal assistance to a witness is required so that the person does not fall under suspicion of committing a crime, as well as that his or her rights are not violated, say, by excessive pressure from the law enforcement system (Stack, 2002; Lestari, 2021).

Discussion

The provision of legal assistance in criminal cases in various countries has international standards that give direction for the development of this area in those states, which allows, based on the experience of other states, to improve the system of providing legal assistance within each individual country (Aaspõllu & Kelve, 2003). One of the main principles of providing legal assistance in criminal cases is to defend the interests of any clients. Also, a lawyer must respect the interests of clients, and if the lawyer learns a secret from the client, then the lawyer should not disclose this data.

One of the main international acts in this area is the UN General Assembly resolution "UN Guiding Principles on Access to Legal Aid in Criminal Justice" (https://www.unodc.org), which enshrines such principles as providing legal aid to citizens is the responsibility of the state; the state should provide assistance in obtaining qualified legal assistance to the accused or suspect persons; the state should provide assistance to victims and witnesses, etc.

Investigation and consideration of criminal cases in any country is a laborious work, in which it is necessary to consider the case in a short time. Due to the fact that there are deadlines, situations may arise in the very process of considering the case, when in a hurry the rights of the persons involved may be violated. Therefore, criminal procedural law provides that participants in criminal proceedings can exercise the right to receive qualified assistance both for a fee and free of charge (Hensler et al., 2000). Most often, this defender is a lawyer,

because, firstly, the lawyer is not a state body, which means that there are no reasons in his or her interests to protect the interests of the state, which helps him or her to protect the interests of citizens. Secondly, a lawyer has a higher legal education, which is a clear advantage if a person who is significant other or native and does not have this education, acts as a defence lawyer. Thirdly, the defence attorney is one of the key roles in any criminal process, because already at the initial stages of the proceedings, the investigation and inquiry bodies can violate the interests of the suspect person.

For example, in Russia, according to the Federal Law "On Legal Practice and Advocacy in the Russian Federation", legal advisers do not have the status of an individual entrepreneur and is not a state body, while they receive remuneration for their activities (On Legal Practice and Advocacy in the Russian Federation: Federal Law of 31.05.2002 No. 63-FZ). In one of the well-known print media in Russia, the average cost of legal services in criminal cases in Russia was calculated. The minimum cost of services is about 20,000 roubles for representation in court; the maximum is 500,000 roubles (Kulikov, 2019). At the same time, the average earnings of the population throughout Russia for 2019 and 2020 starts at about 16,000 roubles (Code of Criminal Procedure: Federal Law dated 18.12.2001). Thus, we see that in order to receive qualified assistance from a counsel at law in criminal case, average Russian citizens need to spend most of their salary, and possibly more.

Russian legislation provides for a range of persons who can receive legal assistance free of charge. This range is enshrined in the Federal Law "On Legal Practice and Advocacy", where the provision on the participation of a legal adviser in civil cases is mainly enshrined. As for criminal cases, an alternative to the free participation of a legal adviser is proposed in Article 51 of the Criminal Procedure Code of the Russian Federation. The activities of a lawyer in criminal proceedings are more complex and responsible, because punishments are mainly aimed at restricting and imprisoning a citizen. Therefore, in Article 51 of the Code of Criminal Procedure of the Russian Federation, a suspect has the right to receive free legal aid (Dušek, 2015; Laxminarayan & Pemberton, 2014). In this connection, the next question arises regarding the quality of this assistance. V.K. Botney says that lawyers are reluctant to take on cases where they have to provide assistance at the expense of the state (Bortney, 2020). The reason is that, at the expense of a certain part of the state budget, little is allocated to finance free legal aid and a lawyer receives little remuneration for the huge work done. In this connection, lawyers do not see their interest in this case, so this, of course, will affect the quality. As for victims, the Code of Criminal Procedure of the Russian Federation does not provide for the right to receive free legal assistance, but on the basis of Part 3 of Article 42 they may be reimbursed for property damage that arose during the investigation of their crime, including for the expenses of their representatives, or may not be. There is a violation of the equality of arms principle. Although the victims are on the side of the prosecution, this does not give a full guarantee that their rights will be protected if they do not take care of that at their own expense (Pranajaya et al., 2020; Eshonkulov, 2021).

The right to receive free legal aid is applied, as we have already said, not only in Russia, but also in a number of other countries (Astrup et al., 2012; Cala et al., 2016). This right helps to maintain the adversarial principle in the process of legal proceedings, so that even the "weakest" person can defend his or her rights and interests in court. For example, in Ukraine this right is enshrined in the Law of 08.07.2011 "On Free Legal Aid" (Law of Ukraine "On Free Legal Aid"), in Croatia this right is enshrined in the Law on Free Legal Aid (https://www.zakon.hr).

United it is enshrined in the Code of Laws In the States, (https://www.unodc.org). Various authors, for example, Giles (2005), conduct research here in more detail about the powers of lawyers. There are several forms of getting free legal aid here. First, as in Russia, it is funded by the state budget. It is most often used in criminal cases. Secondly, it is used at the expense of civil society; it is also formed at the expense of the state, but the state is independent in deciding whom to provide legal assistance to. Civil society is the representative of the interests of the population.

In the PRC, this right is enshrined in the Law on the Bar in its Article 33. Also this law in its paragraph 5 of Article 47 stipulates responsibility in case of refusal from the obligation to provide free legal aid (http://www.chinaruslaw.com). There is no such right in Russian legislation. This is due to the fact that initially it has a voluntary beginning, which, as previously described, has its disadvantage: a lawyer receives a "symbolic" remuneration for a large amount of work done. So, the law of the Russian Federation "On Free Legal Aid in the Russian Federation" in its paragraph 3 of Article 21 stipulates that if a state legal bureau or a lawyer refuses to provide free legal assistance for the reasons listed in clause 2 (the issue is not legal in nature, assistance if there are no grounds for presenting relevant requirements, etc.), then the lawyer obtains the appropriate conclusion (On free legal aid in the Russian Federation: Federal Law dated 21.11.2011). China's free legal aid policy is stricter than in Russia. The use of "stick approach" in Russian society can lead to the fact that lawyers do not want to provide this assistance, because they will understand that they will suffer losses for their wrong actions. Russian policy should be aimed at encouraging the provision of this assistance, and this is not only about monetary rewards. For a lawyer, his or her reputation is important, therefore, the actions of the state should be aimed at increasing this reputation, and thereby a lawyer will be able to protect the rights and interests of people who need it (Suryasa, 2019).

Another person who plays an important role in criminal proceedings is a witness, because they are the carriers of information relevant to the case. And because of this status, their rights can also be violated. Firstly, the witness is forced to become a participant in the case, while no normative act is drawn up that would give them this status, the main thing for the law is the possession of data on the case. In this connection, an investigator will simply be obliged to obtain testimony from the witness, and if this goal is achieved, the rights of the last may be violated; therefore the law does not prohibit a witness from having a lawyer. It is worth noting one feature, which is that a lawyer hired by the witness can only participate in investigative actions, where the witness, by signing a protocol with the lawyer, can be sure that his or her rights are not violated (Ellsberg & Heise, 2002; Das et al., 2017). Secondly, the right to receive legal assistance in criminal

cases in Russia for a witness is limited only by his or her desire, and, accordingly, personal payment, unlike the suspected or accused person; in the Russian law "On Free Legal Aid in the Russian Federation" the witness does not fit the categories of persons eligible for free legal aid that are listed there. The witness is in a very precarious position, and often, being in this position, the witness can obtain the status of a suspect, which in fact worsens his or her situation. Due to the fact that the status of a witness does not have any legal support, citizens of Russia often refuse to testify, which in fact leads to the fact that the criminal proceedings themselves are delayed, and, therefore, the principle of a reasonable period of criminal proceedings is not implemented. Therefore, the state must provide legal protection to such a participant as a witness (Bentham & Dumont, 1825; Awokuse & Yin, 2010).

In criminal cases, the purpose of a lawyer's involvement is to represent the interests of his or her client. The lawyer can give consultations, file motions and challenges, lodge complaints about actions and decisions of state bodies, as well as collect and provide evidence necessary in the case (Code of Criminal Procedure: Federal Law dated 18.12.2001). These rights are duplicated with the rights of the accused, while the rights of the accused persons are slightly broader, since this is due to the fact that the lawyer is a representative of the interests of the suspect and the accused and his or her advantage lies in knowledge of the law. The Article 86 of the Code of Criminal Procedure of the Russian Federation empowers the accused, the suspect and other persons of criminal proceedings to collect evidence in the form of written documents and objects to be attached to the case as evidence. But in Article 88 of the Code of Criminal Procedure, this evidence is evaluated by the prosecutor, the investigator, the court and the interrogator. That is, we see that if a lawyer provides evidence, then it is not a fact that they will be attached to the case, thus, the state authorities decided whether this is evidence or not. Therein the problem lies that the evidence collected by a lawyer depends on the state. As a rule, the state is suspicious of the evidence presented by the defence, which, of course, is biased towards them, so this evidence should be as direct as possible, while circumstantial evidence presented by the prosecution can prove guilt. Therefore, there is no equality in the collection of evidence, and lawyers will need to look for other ways to protect their clients.

Also, an investigation can only be carried out by investigators, where they can discover evidence performing their investigative actions; while carrying out these actions there are attesting witnesses sometimes who are witnesses, in fact. A lawyer has limited sources of evidence, so his or her position is constrained at the very beginning of the investigation.

If we compare this problem associated with the fact that the actions of a lawyer are constrained from the very beginning, for example, with the United States, then American scientists and practitioners also face this. Most often, American scientists refer to the sixth amendment to the Constitution of the United States, since it is in it where there is the basic principle that gives the accused the right to receive the assistance of a lawyer for his or her defence (Cappelletti, 1989). Also, this amendment gives the accused other rights, such as the right to a quick and open trial, and an impartial court decision. Jenny M. Roberts writes in her article that an open investigation helps a lawyer to obtain information for

successful representation of interests in court, since this is the right of the accused persons themselves. It is necessary for contentiousness that both the defence and the prosecution can carry out the investigation, since this is guaranteed by the contentiousness principle. Therefore, a lawyer has investigative powers for the defence and this is his/her direct responsibility (Roberts, 2003). In US law, a lawyer takes the side of his/her client from the moment he/she was arrested. Arrest means any restrictions on freedom; in Russia these restrictions are divided into the detention of a suspect, preventive measures and other measures of procedural coercion.

Also in the United States, plea bargaining is common. These transactions are a consequence of the fact that this admission of guilt by the accused can serve as evidence, after which the judicial investigation is terminated, i.e. the purpose of criminal proceedings is to find the culprit, not to get to the bottom of the truth. This is a significant disadvantage, because justice does not prevail, as a result of which the inalienable rights of a citizen are violated. In the Russian Federation, on the contrary, in Article 6 of the Code of Criminal Procedure of the Russian Federation, the goal of criminal proceedings is enshrined in "protecting an individual from unlawful and unjustified accusations, convictions, and restrictions on his/her rights" (Code of Criminal Procedure: Federal Law dated 18.12.2001).

A feature of the actions of a lawyer in the United States is that his/her activities are aimed at questioning the evidence that directly indicates the guilt of a person (Bentham, 1825). Thus, the judge is confused about this evidence, as a result of which he/she will no longer be able to rely on the evidence, and he/she will evaluate other, more verified evidence.

In the PRC, lawyers, citizens recommended by the people's organization or unit to which the defendant belongs, or other citizens admitted by the people's court and close relatives or guardians of the defendant can act as defenders (http://english.mofcom.gov.cn). When compared with Article 49 of the Code of Criminal Procedure of the Russian Federation, which lists persons who can act as a defender, in China we see that there are citizens from an organization who can represent interests.

The peculiarity of criminal proceedings in the PRC is that a lawyer appears from the moment when the trial itself begins. Therefore, all actions to search for evidence are carried out by the people's courts, the people's prosecutor's office and the public security organs. These bodies collect any evidence, regardless of whether they are exculpatory or, on the contrary, prove guilt. Article 29 of the Criminal Procedure Law of the People's Republic of China lists the rights of defenders, where they can familiarize themselves with the materials and circumstances of the case, as well as meet and correspond with the accused in custody. That is, the role of a defender is minimal here. This law does not provide for him/her to participate in investigations, it turns out that only the state can collect evidence; the defence can only familiarise with the case materials. Due to the fact that the defence lawyer is limited, he/she may, during the trial, demand to call new witnesses, collect new material evidence and conduct a new examination. That is, he/she can refer to the fact that there is little evidence or all

of them are of indirect origin and, based on this, build a defence mechanism for the accused. In Russian law, a lawyer can also refer to the lack of evidence, in connection with which the court can return the case to the prosecutor, and then the prosecution will look for new evidence.

Conclusions

Thus, we see that within the framework of a comparative analysis, in Russia the parties are more contentious, since this is one of the principles of criminal proceedings, while in China the goal is to set the free application of the law, to punish criminals, to ensure that innocent people are not subjected to criminal prosecution, etc (http://english.mofcom.gov.cn). Another important feature of the PRC is that a witness cannot have a defence lawyer, both during investigative actions and during court proceedings. That is, a witness in China is not protected at all, while in Russia a witness can receive at least minimal legal assistance, at least at his/her own expense. In this country, the state is both a defender and a punisher rolled into one. As in Russia, in many European countries the obligation of a lawyer to participate as a professional participant in certain categories of cases, for example, with the participation of minors, is enshrined (Stern, 2017).

Having analysed the main normative legal acts in the field of criminal procedure in different countries, we can say that the issues regarding the protection of persons against whom prosecution is taking place is of great international importance. Some countries are introducing norms and tendencies from international law into their legal systems. The basic international principles of the lawyer's (advocate's) activities are fixed in the basic principles on the role of lawyers, which describe the right to receive free legal aid to those who are poor; their citizens have the right to choose a representative of interests in the judiciary, have the opportunity to contact with their lawyer in any moment, etc. (https://www.ohchr.org). We understand that every person needs legal assistance, regardless of which side he or she speaks from: accusations, defence or another participant, for example, a witness. Therefore, it is necessary to understand that this assistance should be available to everyone and throughout the entire criminal proceedings. The activities of a lawyer are a catalyst for the development of a humane state, therefore, countries should expand the opportunities for free participation of lawyers in criminal cases and the powers of lawyers for a full comprehensive consideration of a criminal case, which will protect the interests of each person.

References

Aaspõllu, A., & Kelve, M. (2003). The first criminal case in Estonia with dog's DNA data admitted as evidence. In *International Congress Series* (Vol. 1239, pp. 847-851). Elsevier. https://doi.org/10.1016/S0531-5131(02)00224-8

Astrup, B. S., Ravn, P., Lauritsen, J., & Thomsen, J. L. (2012). Nature, frequency and duration of genital lesions after consensual sexual intercourse—Implications for legal proceedings. *Forensic science international*, 219(1-3), 50-56. https://doi.org/10.1016/j.forsciint.2011.11.028

Awokuse, T. O., & Yin, H. (2010). Does stronger intellectual property rights protection induce more bilateral trade? Evidence from China's imports. World

Development, 38(8),

1094-1104.

- https://doi.org/10.1016/j.worlddev.2009.12.016
- Bentham, J., & Dumont, E. (1825). A Treatise on Judicial Evidence: Extracted from the Manuscript of Jeremy Bentham. Paget.
- Bortnev, V.K. (2020). Problems of providing free legal aid to the Bar Association of Russia.
- Cala, M. J., Trigo, M. E., & Saavedra, F. J. (2016). Women's disengagement from legal proceedings for intimate partner violence: Sociodemographic and psychological variables. *The European Journal of Psychology Applied to Legal Context*, 8(1), 35-42. https://doi.org/10.1016/j.ejpal.2015.10.002
- Cappelletti, M. (1989). The Judicial Process in Comparative Perspective. Oxford: Clarendon Press.
- Das, S. K., Plumari, S., Chatterjee, S., Alam, J., Scardina, F., & Greco, V. (2017). Directed flow of charm quarks as a witness of the initial strong magnetic field in ultra-relativistic heavy ion collisions. *Physics Letters B*, 768, 260-264. https://doi.org/10.1016/j.physletb.2017.02.046
- Dušek, L. (2015). Time to punishment: The effects of a shorter criminal procedure on crime rates. *International Review of Law and Economics*, 43, 134-147. https://doi.org/10.1016/j.irle.2014.04.007
- Elena, A. Kupryashina, Oksana, S. Stepanyuk, Irina, V. Savelieva, Vyacheslav, E. Tonkov, Evgeniy E. Tonkov (2017). Jury Trial as the Atavism of History. Journal of Politics and Law, 10(4), 212-215.
- Ellsberg, M., & Heise, L. (2002). Bearing witness: ethics in domestic violence research. *The lancet*, 359(9317), 1599-1604. https://doi.org/10.1016/S0140-6736(02)08521-5
- Eshonkulov, J. (2021). Artistic interpretation of the epic creative image. *International Journal of Linguistics, Literature and Culture*, 7(3), 146-151. https://doi.org/10.21744/ijllc.v7n3.1498
- Fesenko, N. P., Kosolapova, N. Y. A., Mamin, S. N., Ponomarenko, N. Y. Y., & Zhukova, N. A. (2017). Analysis of the european court of human rights practice on the protection of children's rights. *Turkish Online Journal Of Design Art And Communication*, 7, 678-684.
- Giles, M. (2005). Opting Out of Liability. Michigan Law Review, 104(3), 373-430.
- Hensler, D. R., Dombey-Moore, B., Giddens, E., Gross, J., & Moller, E. (2000). Class action dilemmas: Pursuing public goals for private gain. Rand Corporation.
- Kuksin, I. N., Novikov, A. B., Potapov, V. J., Sinenko, V. S., & Thabisimov, H. A. (2019). Organization of advocacy in various legal systems: comparative analysis.
- Kulikov, V. (2019). Protection is highly prized. Rossiyskaya gazeta, 187, 7945.
- Lai, E. L. C. (1998). International intellectual property rights protection and the rate of product innovation. *Journal of Development economics*, *55*(1), 133-153. https://doi.org/10.1016/S0304-3878(97)00059-X
- Laxminarayan, M., & Pemberton, A. (2014). The interaction of criminal procedure and outcome. *International journal of law and psychiatry*, 37(6), 564-571. https://doi.org/10.1016/j.ijlp.2014.02.030
- Lestari, S. E. (2021). Protection of constitutional rights against Indonesian women workers. *Linguistics and Culture Review*, *5*(S1), 710-725. https://doi.org/10.21744/lingcure.v5nS1.1458

- Pranajaya, I. K., Suda, I. K., & Subrata, I. W. (2020). Marginalization of Bali traditional architecture principles. *International Journal of Linguistics*, *Literature and Culture*, 6(5), 10-20. https://doi.org/10.21744/ijllc.v6n5.975
- Roberts, J. (2003). Too Little, Too Late: Ineffective Assistance of Counsel, the Duty to Investigate, and Pretrial Discovery in Criminal Cases. *Fordham Urb. LJ*, 31, 1097.
- Stack, S. (2002). Gender and scholarly productivity: The case of criminal justice. *Journal of Criminal Justice*, 30(3), 175-182. https://doi.org/10.1016/S0047-2352(01)00134-9
- Stern, R. T. (2017). *Implementing Article 12 of the UN Convention on the Rights of the Child: Participation, power and attitudes.* Brill.
- Suryasa, W. (2019). Historical Religion Dynamics: Phenomenon in Bali Island. *Journal of Advanced Research in Dynamical and Control Systems*, 11(6), 1679-1685.
- Vyacheslav, B. A. ., Fedotova, O. A., Kakurina, M. V., Mikhaleva, G. G., & Novikova, S. V. (2021). Protection of minor rights in Russia and European Union countries. *Linguistics and Culture Review*, *5*(S3), 950-957. https://doi.org/10.21744/lingcure.v5nS3.1688