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PhD dissertation by mgr Olga Hałub: 'A formalized model of access to free legal aid at the pre-trial stage in Poland', written under the supervision of prof. dr hab. Mariusz Jabłoński

Abstract

The subject matter of the present work is a presentation and analysis of the characteristics of the formalized model of access to free legal aid at the pre-trial stage in Poland. The direct inspiration for taking up this subject is the adoption of the Act of 5 August 2015 on free legal aid and legal education. It constitutes the legislative source of a new public service provided in Poland since 1 January 2016. As a result, Poland – as the last European Union Member State to do so – has joined the group of states ensuring access to legal aid at the pre-trial stage in a formalized manner, *id est* regulated at the statutory level.

The work is concentrated on an analysis of the normative sources of access to free legal aid at the pre-trial stage. One of the primary research problems concerns the issue of the constitutional potential of the legal grounds that may indirectly decide about the right to take advantage of this service. The investigations conducted serve to verify the research hypothesis that this potential is too narrow to ensure full protection of the legal interests of the so-called 'socially vulnerable'. It should also be considered appropriate to take up the issue of whether guaranteed access to free legal aid at the pre-trial stage constitutes an excessive privilege for particular social groups. Another research objective is an attempt at developing a catalogue of model characteristics for access to free legal aid at the pre-trial stage in Poland based on both constitutional and statutory regulation, as well as sources of international law effective in the Polish legal order.

The dissertation has been divided into an introduction, five chapters, and a conclusion. The first chapter is focused on the normative sources of access to legal aid at the pre-trial stage in international law. These guarantees have been elaborated as part of the human rights protection system within whose framework they were adopted. Initial analysis addresses the

solutions adopted under the universal system of human rights protection, then within the European system.

The second chapter addresses sources of access to free legal aid at the pre-trial stage in the Polish Constitution. Considering the absence of an *expressis verbis* guarantee, indication has been made of the indirect sources of access to the public service under consideration present in the preamble, the principles of the political system, and in Chapter II of the Polish Constitution, which addresses the rights and freedoms of the individual.

The third chapter discusses the provision of free legal aid at the pre-trial stage in Poland by entities acting on legal bases other than the Act on free legal aid and legal education. A classification of those entities has been developed for the purposes of the present investigations. The activity of both public entities (e.g., social assistance bodies, ombudsmen) and non-public (e.g., non-governmental organizations) has been addressed.

The fourth chapter is devoted to a review of the characteristics of free legal aid at the pre-trial stage introduced into the Polish legal system under the Act on free legal aid and legal education. These investigations first entailed a synthetic juxtaposition of parliamentary work preceding the adoption of the normative act under discussion. Next, the solutions operating since 1 January 2016 were reviewed, with a focus on such issues as the subjective and objective scope of the service, the status of service providers, the organization and mode of the provision of legal aid, oversight of the performance of this public task. Practical issues arising after the Act's entry into force have been indicated, and propositions have been elaborated for normative solutions to improve the system.

A short characterization of formalized models of access to free legal aid at the pre-trial stage in selected European countries constitutes the subject matter taken up in the dissertation's fifth chapter. Two groups of representative solutions have been distinguished – the so-called unified model and the diffuse model of legal aid.

The dissertation constructed in this manner became a basis for elaborating conclusions related to the research objectives, as well as the research hypothesis, which was confirmed. The analyses as undertaken also facilitated the enumeration of model characteristics of access to free legal aid at the pre-trial stage in Poland, as well as the preparation of *de lege ferenda* conclusions and *de lege lata* postulates in reference to constitutional and statutory regulations.

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