

Legal Aid Provided At The Expense of the State: Foundations in International Law

Sultanova Madinabonu Ulugbek qizi¹

¹ Master's student of the Tashkent State University of Law

Abstract:

This article examines the international principles underpinning state-funded legal aid, highlighting its critical role in ensuring access to justice and protecting human rights. Grounded in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, state-funded legal aid promotes equality before the law and fair trials. It also addresses the protection of vulnerable groups and the importance of effective legal remedies, reinforcing the commitment to a fair and accessible legal system for all. This article underscores how international frameworks ensure justice as a fundamental right for all, fostering a more just and equitable society.

Keywords: State-funded legal aid, international principles, human rights, access to justice, equality before the law, vulnerable groups, effective legal remedies, fair trials.

In any just society, the ability to access legal representation and support is a fundamental right. However, the high costs of legal services often place this right out of reach for many, particularly the most vulnerable and marginalized populations. This is where state-funded legal aid plays a crucial role. The practice of providing legal assistance at the state's expense is deeply rooted in international principles and human rights standards, ensuring that justice is accessible to all, irrespective of their financial means. These principles highlight the social essence of state-funded legal aid, underscoring its significance in promoting social equity, inclusion, and trust in the legal system.

A fundamental international principle that has contributed to the emergence and development of the right to state-funded legal aid is the principle of equality before the law and the universal right to a fair trial. *The Universal Declaration of Human Rights* (UDHR), adopted by the United Nations General Assembly on December 10, 1948, laid the foundation for the development of international human rights law and established fundamental principles and standards aimed at protecting and

upholding the basic rights and freedoms of every individual, including the right to equality before the law, the presumption of innocence, and the right to a fair trial.

Article 7 of the UDHR states that "all are equal before the law and are entitled without any discrimination to equal protection of the law". Building on this principle, Article 8 of the UDHR declares that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law". The direct connection between the legal principles set forth in these articles and the provision of state-funded legal aid lies in the need for a legal mechanism to implement these principles, which is provided by the state itself.

To realize the right to equal protection of the law and effective remedy by the courts, legal assistance is often necessary. This typically means professional legal help, which involves paid legal consultation or representation in various institutions. However, not all segments of the population can afford this assistance, especially when their rights are violated. Therefore, to prevent discrimination based on social status or financial standing, and to ensure equal access to justice and equal legal protection, the state assumes the responsibility of providing free legal aid to its population. This is a straightforward yet accurate explanation of the primary purpose and function of state-funded legal aid.

The UDHR, and consequently the laws of many countries that have ratified the declaration, place special emphasis on protecting individuals in criminal proceedings. According to Article 11 of the UDHR, "everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defense". In addition to establishing the presumption of innocence and the right to a public and fair trial, this article guarantees the provision of defense for anyone accused of a crime. This is reflected in the provision of state-funded legal aid, embodying the principle of non-discrimination. It allows indigent suspects and defendants to adequately represent their interests in court, ensuring that their right to a fair trial is not limited by their financial situation.

The International Covenant on Civil and Political Rights (ICCPR), adopted on December 16, 1966, is a United Nations treaty grounded in the principles of the Universal Declaration of Human Rights. The ICCPR obligates its signatories to respect the civil and political rights and freedoms of individuals, including the right to life, freedom of religion, speech, assembly, as well as electoral rights, and rights to due process and a fair trial. Article 14 of the ICCPR elaborates on and establishes the rights and freedoms of individuals, particularly suspects, accused persons, and defendants in criminal proceedings.

Regarding legal aid, clause 3(d) of Article 14 of the International Covenant on Civil and Political Rights (ICCPR) states that everyone charged with a criminal offense has the right to the following minimum guarantees, on equal terms:

"To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him if he does not have sufficient means to pay for it".

Several key points deserve attention here. Firstly, the article explicitly states that providing free legal assistance in criminal proceedings is a minimum standard for participating countries, and they may extend free legal aid to other types of proceedings, such as civil or administrative, at their discretion. Secondly, the article establishes the obligation to notify persons of their right to have a defense lawyer, as well as the grounds for obligatory provision of such a lawyer when the interests of justice so require and the obligation for providing a defense lawyer free of charge when the person does not have sufficient means to pay for such a lawyer.

From this, it can be concluded that, according to the aforementioned international documents, there must be certain legal requirements for providing state-funded legal aid, and the suspect, accused, or defendant must lack the means to pay for a lawyer. For example, having a representative lawyer for the victim can be considered a legal requirement. Many countries, including the Republic of Uzbekistan (Article 51, paragraph 7 of the Criminal Procedure Code of the Republic of Uzbekistan), legislate this as a basis for the mandatory participation of a defense lawyer for the defendant in the trial.

By ensuring that individuals are informed of their rights and providing necessary legal aid without financial burden, states uphold the principles of justice and equality. This comprehensive approach not only adheres to international standards but also reinforces the commitment to a fair and equitable legal system where justice is accessible to all, regardless of economic status.

Article 6, paragraph 3(c) of the *European Convention on Human Rights* (ECHR) guarantees the right of every accused person to receive free legal aid if the interests of justice require it. This provision ensures that individuals facing criminal charges are not deprived of a fair trial due to their inability to afford legal representation. The criteria for determining the "interests of justice" include several factors, namely the seriousness of the punishment that may be imposed, the legal and factual complexity of the case, the ability of the accused to conduct his or her own defense independently.

1. **The seriousness of the potential punishment:** Cases involving severe penalties, such as lengthy imprisonment or substantial fines, necessitate legal representation to ensure that the accused receives a fair defense.
2. **The legal and factual complexity of the case:** Complex cases that involve intricate legal issues or substantial amounts of evidence require the expertise of a lawyer to navigate the proceedings effectively.
3. **The accused's ability to conduct their own defense independently:** The court considers whether the accused has the capability, knowledge, and resources to represent themselves adequately. If not, legal aid is provided to ensure their rights are protected.

These criteria are designed to uphold the principle of equality before the law and ensure that justice is administered fairly, regardless of an individual's financial circumstances.

It is important to note that based on the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the United Nations developed the *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. This document is a key tool for promoting the right to a fair trial and strengthening human rights protection in criminal justice. It outlines the fundamental principles and recommendations that states should follow to ensure effective and equal access to legal aid for all individuals involved in the criminal justice process, especially the poor and vulnerable groups.

The document emphasizes the need to guarantee the right to qualified legal assistance at all stages of the criminal process, including preliminary investigation, trial, and appeal stages. It also highlights the importance of the independence and professionalism of legal aid providers, as well as the necessity for training and preparation of legal specialists. The "Principles and Guidelines" serve as a foundation for the development of national standards and practices in the field of legal aid, thereby strengthening the rule of law and protecting fundamental rights and freedoms. However, it should be remembered that this document is adopted as recommendations regarding the principles for forming legal aid systems in the field of criminal justice for member states.

What is more, this UN document also acknowledges that legal aid is a crucial element in the functioning of a criminal justice system based on the rule of law, serving as a foundation for the exercise of other rights, including the right to a fair trial. It is an essential guarantee for ensuring the fundamental fairness of the criminal justice process and public trust in it. This further demonstrates

that the practice of providing free legal aid by the state to those in need is based on international treaties and conventions and originates from universally recognized international legal principles.

The principle of protecting vulnerable groups is aimed at ensuring special protection for individuals in vulnerable situations, such as children, women, persons with disabilities, and refugees. The concept of "social vulnerability" means the loss of freedom or means of subsistence due to reasons beyond an individual's control, resulting in the inability to enjoy equal rights without special social protection (Kolosova, 2000). Therefore, vulnerable groups are guaranteed the right to receive free legal aid from the state.

This principle is reflected in several international documents. For instance, *the Convention on the Rights of the Child*, adopted in 1989, guarantees children's right to access legal assistance and a fair trial. Similarly, *the Convention on the Elimination of All Forms of Discrimination Against Women*, adopted in 1979, ensures equal access for women to legal assistance. Furthermore, the *Convention on the Rights of Persons with Disabilities*, adopted in 2006, emphasizes the right of persons with disabilities to effective access to justice.

The principle of *effective legal remedies* requires that every individual has access to means of legal protection to ensure the observance of their rights and freedoms. The criteria for the principle of effectiveness are accessibility, feasibility and operability (Kuznetsova, 2013). Considering the right to seek legal redress in court as a means of legal protection, effective implementation of this right necessitates the assistance of a lawyer. Therefore, by providing free legal aid, the state guarantees the effectiveness of legal remedies.

This principle is enshrined in key international documents. *The International Covenant on Civil and Political Rights*, in Article 14, guarantees the right to a fair trial, including the right to adequate time and facilities for the preparation of a defense and the services of a lawyer. Similarly, *the European Convention on Human Rights*, in Article 6, establishes the right to a fair trial, which implies the right to quality legal assistance.

State-funded legal aid is fundamentally rooted in international principles and human rights standards, as outlined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which emphasize equality before the law and the right to a fair trial. The UN's guidelines further stress the importance of accessible, independent, and professional legal assistance. Additionally, protecting vulnerable groups such as children, women, persons with disabilities, and refugees underscores the need for tailored legal aid services to ensure equal rights. The principle of effective legal remedies, supported by key international documents like the ICCPR and the ECHR, highlights the essential role of state-funded legal aid in ensuring fair and accessible legal systems. Collectively, these international frameworks guarantee that justice is a fundamental right for all, promoting a more just and equitable society.

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