

Legal Acts of State Legal Assistance: The Concept and Research Perspectives

Vladislav Panchenko^{1,2,3,4,*}, Ivan Makarchuk^{1,2}, Natalya Frolova^{5,6},
Konstantin Shushpanov², Galina Pchelkina²

¹Siberian Federal University, 660041 Krasnoyarsk, Russia

²Krasnoyarsk State Agrarian University, 660049 Krasnoyarsk, Russia

³Federal Siberian Research and Clinical Center FMBA, 660037 Krasnoyarsk, Russia

⁴Research Institute of the Federal Penitentiary Service of Russia, 125130 Moscow, Russia

⁵Russian Presidential Academy of National Economy and Public Administration, 119571 Moscow, Russia

⁶Diplomatic Academy of Russian Foreign Ministry, 119021 Moscow, Russia

*Corresponding author. Email: panchenkovlad@mail.ru

ABSTRACT

The article considers the essential and distinctive features of legal acts of state legal assistance. The authors position legal acts of state legal assistance as a special kind of individual legal acts that contribute to the execution of rights, legitimate interests and legal obligations of legal entities by proposing solutions to specific legal situations and aimed at stimulating the legitimate activities of legal entities. The study outlines possible vectors of the legal phenomenon in question. According to the results of the study, it seems theoretically justified and practically necessary to further study legal acts of state legal assistance for the exercise of rights and legitimate interests, including the boundaries of their types' diversity, hierarchy, legal technique, issues of correlation with regulatory legal acts, and implementation mechanisms. The authors point out that legal acts of municipal legal assistance, as well as issues of systemic interaction of legal acts of state and municipal legal assistance, require similar comprehensive consideration.

Keywords: *act, legal act, individual legal act, state legal assistance in the exercise of rights, legal interests and legal duties, public authorities*

1. INTRODUCTION

In its most general form, legal assistance in the exercise of rights and legitimate interests is defined as carried out by various entities in the types and forms provided for by positive law as a primary or additional function, professional legal activity that is not forced upon the recipient, contributing by legal means to the unhindered exercise of their rights and legitimate interests.

Legal assistance for the exercise of rights and legitimate interests is a form of exercising the functions of public authorities and, from this perspective, this phenomenon represents the activities of public authorities (state bodies and local governments) regulated by the rules of law, which are carried out with respect to the recipient of such assistance by non-coercive legal means in order to create favorable legal conditions for the exercise of rights, legitimate interests and legal duties regarding an individually defined subject of law in a specific legal situation [1].

Russian society is experiencing an increased need for legal acts of state authorities that promote the exercise of the rights and legitimate interests of citizens and organizations and the development of the law enforcement practice

existing on the basis of scientifically sound approach and materials.

2. MATERIALS AND METHODS

Research on various issues of legal acts of state legal assistance requires a comprehensive methodological approach and the use of relevant legal frameworks and concepts.

Therefore, in this paper, the authors used a number of special legal methods (such as the method of interpreting the rules of law, normative dogmatic and formal legal methods) in order to examine legal acts of state legal assistance as drivers that ensure the proper protection and provision of rights, legitimate interests, and legal obligations.

A broad methodological approach and the use of an extensive regulatory framework allowed us to reach scientifically sound conclusions and enabled us to make inferences that have practical and predictive potential. A thorough review of the relevant literature discusses important studies on the general theory of law and state, among many others.

3. RESULTS

3.1. Legal Acts of State Legal Assistance: General Description

In modern Russia, there are three systems of legal assistance for the exercise of rights and legitimate interests, which are worth speaking about: private legal assistance provided by purely human rights institutions; private-public legal assistance provided by human rights and law enforcement special and functional institutions; public legal assistance, covering functional law enforcement institutions [2].

The aforementioned legal assistance systems make it possible to distinguish at least three groups of legal acts of legal assistance for the exercise of rights and legitimate interests: legal acts of private legal assistance, legal acts of private-public legal assistance, legal acts of public legal assistance for the exercise of rights and legitimate interests.

One of the legal means used by public authorities in providing legal assistance is legal acts of legal assistance. Since public authorities are represented by both state bodies and municipal authorities, it is legitimate to talk about legal acts of municipal legal assistance and legal acts of state legal assistance.

Legal acts of state legal assistance, differ in variety, forms of adoption and content, act as a means of strengthening the rule of law and order, contribute to the development of legal culture and legal awareness, both at the ordinary and professional level.

This article will set forth the essential features (with subsequent definition) of legal acts issuing from bodies and persons vested with state powers and aimed at legal assistance in the exercise of rights and legitimate interests. State legal assistance, being one of the institutionalized forms of legal assistance, runs through all spheres of state authorities' activity, defines the general picture of ensuring rights and legitimate interests at the state level, contributes to its positive development.

The legal acts of state legal assistance for the implementation of rights and legitimate interests have been widely spread in the activities of prosecution bodies. The prosecutor's or other authorized body's warning can be a striking example of a legal act of state legal assistance. A contributory component of the warning lies in its specifically informing function, focused on changing or correcting a person's willingness to act in the legal sphere by means of indicating the inadmissibility of certain actions [3].

Research of legal acts of state legal assistance for the exercise of rights, legitimate interests, and legal duties implies their analysis through the generic concepts: "act", "legal act" and "individual legal act".

In Russian, the word "act" has the following basic meanings: a single action, as well as a separate act; a law, a decree of state bodies, or a decree of public

organizations; a document certifying anything [4]. The act has similar meanings in foreign literature as well.

Jurisprudence regards an act as a decision, action, or document having a legal sense. Individual legal acts are law enforcement acts of a personalized content emanating from public authorities in connection with a problematic legal situation requiring legal resolution, designed for a single (one-time) application. Such acts are determined by specific relations, are their consequence, and cease to exist after the termination of the relevant legal relations [5].

Individual legal acts act as a legal instrument for resolving specific legal situations and related relations, aimed at satisfying the legitimate interests of certain persons, while individualizing the content of normative legal acts, as if "shifting" the latter to these subjects-holders of rights. Here, individual regulation, casual impact on social relations takes place. Individual legal acts are capable of providing a positive law enforcement result in resolving a specific legal situation.

3.2. The Concept and Features of Legal Acts of State Legal Assistance

Legal acts of state legal assistance for the exercise of rights and legitimate interests as a form of individual legal acts are characterized by the following features.

Firstly, legal acts of state legal assistance for the exercise of rights and legitimate interests, by the form of expression, as a rule, are legal documents. In this sense, a legal act-document is a decision expressing the will of a subject of law and drawn up in the prescribed manner, containing legal means (prescriptions), designed to achieve appropriate goals (to regulate public relations) and entailing certain results (legal consequences) [6].

Written legal acts of state legal assistance for the exercise of rights and legitimate interests are documents of a special kind having a developed by practice and (or) established by law (departmental acts), form, content, and structure (the optimal structuring of the text of the act and its construction according to the rules of legal technology, the formulation of rules of conduct of a certain nature, the legal language, compliance with mandatory details, etc.).

Legal acts of state legal assistance for the exercise of rights and legitimate interests may also have an oral form (in the form of oral decisions or oral statements) emanating from authorized entities.

Secondly, legal acts of state legal assistance for the exercise of rights and legitimate interests arise as a result of a special type of practical activity of an authorized state body (within its competence, functions, and powers) – law enforcement, in the course of which the presence of legal and factual grounds for legal assistance is established and a decision on rendering or non-rendering legal assistance to the legal activities to the subject of law is made.

Legal acts of state legal assistance for the exercise of rights and legitimate interests are inseparable from the obligation of state authorities and relevant officials to comply with the legislation of the Russian Federation. In

this regard, it is extremely important for the law to determine a list of certain persons who should contribute to the exercise of rights and freedoms through the execution of their functional duties and the regulation of the latter, i.e. their list of due performance. It is believed that if the list of contributing state bodies and officials falls within the need to be enshrined at the legislative level, then the regulation of functional powers and responsibilities should be carried out at the by-law level through the adoption, including administrative regulations. Issuing a legal act is preceded by the formation of a legal position of a public authority. The legal position of the state body providing legal assistance is the official attitude of the law enforcement body to the problematic legal situation, the final conclusion on the presence or absence of obstacles in the exercise of the rights and legitimate interests of the subject of the holder of rights, as well as a set of motivated conclusions and arguments given in support of the state body position. Here, creative principles of law enforcement activity aimed at ensuring the exercise of rights and legitimate interests are manifested [7].

Legal acts of state legal assistance for the exercise of rights and legitimate interests determine the value character of the law enforcement process in the course of which they direct the actions of state bodies and their officials to achieve the desired legal result.

Thirdly, the teleological (target) purpose of legal acts of state legal assistance for the exercise of rights and legitimate interests is to ensure the timely, adequate, and unhindered exercise by subjects of their legal capabilities (rights and legitimate interests) established by regulatory legal acts. Achieving the goals of state legal assistance for the exercise of rights and legitimate interests is ensured not only by regulatory legal acts but also through the direct application of legal acts of state legal assistance. Adopted for a specific purpose, legal acts of state legal assistance act as a means of implementing the latter [8].

We believe that the legal goals are especially vividly manifested in legal acts of state legal assistance, as the latter have a pronounced individual orientation, focus on assisting the subject of law in need of support in the course of rights and legitimate interests exercise. The content of legal acts of state legal assistance should clearly convey what objectives the law enforcer sets himself by issuing such an act into being. The ultimate goal of legal acts of state legal assistance for the exercise of rights and legitimate interests is the result of the intellectual, expert, and volitional activities of the law enforcer. The will presupposes the presence of a certain intellectual moment: in the consciousness of the subject who commits an act of an individual character, the final result that he seeks to achieve is reflected.

Volitional content of the subject's action is directly expressed in the aspiration to achieve the desired result. Legal implementation may not be obtained by any, but only by legitimate interests guaranteed by legislation and international law. Taking account of the rights and legitimate interests of the authorized person, recognition by the law enforcer of the significance and legitimacy of the claims put forward by the subject and readiness to

satisfy them is the most important criterion for legal assistance in the exercise of rights and legitimate interests. Thus, the considered acts by their legal nature are decisions of authorized bodies aimed at achieving socially positive goals and entailing certain legal consequences.

Fourth, since legal assistance in the exercise of rights and legitimate interests is carried out by legal means, it is reasonable to consider legal acts of state legal assistance in the implementation of rights and legitimate interests as legal instruments by means of which the interests of legal entities are ensured and satisfied, the goals of legal regulation are achieved, that is, legal acts of state legal assistance are classical legal means. In the plane under consideration, legal acts of state legal assistance are auxiliary legal means of the lawful activity of entities, facilitating the exercise by the latter of their rights and legitimate interests.

Fifth, legal acts of state legal assistance for the exercise of rights and legitimate interests have a dual nature - they can simultaneously be non-jurisdictional and jurisdictional in nature. In relation to the recipient of legal assistance, the legal act is always non-jurisdictional (positive) in nature, and if there is a person who impedes the exercise of rights and legitimate interests, violates (or has already violated) the rights and legitimate interests of the subject - holder of rights, the legal act of legal assistance will be jurisdictional.

Legal acts of state legal assistance with a jurisdictional component are based on the method of persuasion and are focused on good behavior encouragement. The more legal incentive legal acts of legal assistance are present in legal life, the more effectively they are applied by the authorities, the less the law enforcer has to use legal acts that are coercive and punitive.

The wide spreading of legal acts of state legal assistance for the exercise of rights and legitimate interests allows us to overcome the legal tradition inherited from the Soviet system towards universalization, the absolutization of legal coercion as a method of ensuring law, the hypertrophied role of coercion in law, both by the legislator and law enforcement. Thus, legal acts of state legal assistance for the exercise of rights, legitimate interests, and legal duties can be defined as a special kind of individual legal acts that contribute to the exercise of rights, legitimate interests and legal obligations of legal entities by proposing solutions to specific legal situations and aimed at stimulating the legitimate activities of legal entities [9].

3.3. Functions of Legal Acts of State Legal Assistance

Legal acts of state legal assistance perform the following functions [10].

1. Security function. It involves guaranteeing the protection of rights and legitimate interests of legal entities, as well as the fulfillment of legal obligations. The security function is represented by two sub-functions of legal acts of state legal assistance, namely, protective and

defensive sub-functions, since the concept of security is directly related to protection and defense.

Legal acts of state legal assistance serve as a means of ensuring rights and legitimate interests, as well as a way of identifying and eliminating violations of the due legal process of exercising rights and legitimate interests.

In other words, the security function is the result of the activity of public authorities and officials focused on protecting and defending the rights and legitimate interests of legal entities, and on creating the conditions for the legal entities to effectively exercise their legal rights.

2. Regulatory function. Legal acts of state legal assistance are focused on regulating the relations of a legal entity (the bearer of rights) with law enforcement institutions and other parties in a specific legal situation, which is regulated by legal acts.

Thus, it is fair to say that legal acts of state legal assistance are aimed at specifying the rights and obligations, as well as establishing the methods, procedures, and scope for the implementation of the rights and legitimate interests of legal entities (bearers of rights). Also, the regulatory function sets a direction for the implementation of rights and legitimate interests in the activity of public institutions.

3. Stimulating function. Legal acts of state legal assistance are aimed at encouraging the recipients of legal instructions to voluntarily (positively) and accurately perform the actions according to the received legal information.

By establishing certain behavioral models of individuals, legal acts of state legal assistance encourage the recipients of information to be active, and they also give guidance to the legal entities on the specifics of a legal situation [11].

Legal stimulation of the positive activity of the recipients of legal acts of state legal assistance involves a systematic incentive strategy, which affects consciousness and willingness of legal entities, and generates interest and motivation, encouraging them to take necessary actions so that the law enforcement institutions are able to assist them in the exercise of their rights and legitimate interests.

4. Restorative function. Often, the legal acts that we are discussing in this paper have a goal to restore social relations back to the original state, in which they had been before any violation of rights occurred, or they may also have a compensatory effect.

The most vivid examples of the restorative function can be found in the activities of the prosecution authorities. For instance, the Customs Service in Novosibirsk (a Russian city) had repeatedly rejected the reasonable complaints of Mr. Frolov, an officer of the Russian army, about the refusal of the customs officers to hand over, without any additional fees, his 57kg personal baggage that arrived from the city of Kaliningrad. His legal rights were restored only after the intervention of the prosecutor's office. When the prosecutor examined Mr. Frolov's complaint, he found out that those customs officers, on the pretext of the absence of customs declaration forms, referred citizens to a private firm, which provided them with necessary forms and assistance with filling in their declarations for a substantial fee. At the request of the

prosecutor, that illegal practice was stopped, and the necessary forms finally appeared at the customs post.

Within the framework of criminal proceedings, the prosecutor's office is entrusted with an obligation to restore the violated rights, compensate for the damage caused, and if the restoration of the violated right is impossible, e.g., due to the expiration of the statute of limitation, then the prosecutor has the right to dismiss the complaint, but may, instead, start prosecuting the liable officials found responsible. In this regard, the Constitutional Court of the Russian Federation rightly noted that the legal position of the prosecutor, as a participant in the process of restoring rights of legal entities, unlawfully subjected to criminal prosecution, and compensating for the harm caused to them, is determined by the status of the prosecution office, its place, and purpose within the state machinery.

5. Informative function. The recipients of legal acts of state legal assistance receive information about the optimal patterns of legal behavior in a specific legal situation, which serves as guidance within the existing legal framework.

This function suggests that the law makes an impact in informational and psychological forms. The informational form of legal impact involves informing legal entities of the different ways of behavior that may be subject to either approval or disapprobation by the state. The essence of the psychological form of impact lies in the formation of legal attitudes and views of the recipients of legal acts, and it reflects the influence on the psychological patterns of behavior, which helps the recipients to feel confident in legal matters and plan their actions accordingly.

In itself, legal assistance in the exercise of rights and legitimate interests is an exchange of legal information and activities. Therefore, legal acts of state legal assistance represent a form of transfer of legally significant information that contains provisions clarifying and specifying laws and regulations [12].

Legal acts of state legal assistance affect the recipients by informing them of legal and illegal behavior. A vivid example may be the numerous acts of clarification of regulatory legal acts and the respective procedures, which can be either written (i.e., letters, including e-mail, fax, etc.) or oral. These acts can be primary (when they are prepared at the instance of a state institution itself) or secondary (as a response to a letter, request, complaint, petition, etc.). We should note that explanatory legal acts are similar in their purpose to the explanations of the rights and obligations provided by the court and the investigators. Thus, when preparing a case for civil proceedings, the judge explains to the parties their procedural rights and obligations (Article 150 of the Civil Procedure Code of the Russian Federation, Article 135 of the Arbitration Procedure Code of the Russian Federation). In criminal proceedings, the court, the prosecutor, the investigator, and the inquiry officer must explain to all parties and participants (i.e., the suspect, the accused, the victim, the civil plaintiff, the civil defendant, etc.), their rights, duties, and responsibilities and ensure the possibility of effectively exercising these rights (Article 11

of the Criminal Procedure Code of the Russian Federation).

The addressees of legal acts of state legal assistance receive information about the legal consequences of a particular activity. Such information is often contained in the legal act itself in an abridged form, e.g., when the addressee is warned that failure to comply with the legal act within the statutory period entails liability. A good example is Article 17.7 of the Administrative Violations Code of the Russian Federation (deliberate failure to comply with the requirements of the prosecutor, arising from his powers and established by federal law, as well as the legal requirements of the investigators and the inquiry officers).

It seems that in order to effectively enhance the informative function of legal acts of state legal assistance, law enforcement officers should provide more information on the legal consequences of different models of legal behavior. In this regard, it is reasonable to better explain and elaborate on the provisions of relevant administrative regulations. For example, failure to comply with the requirements within a certain period may serve as a reason for initiating the administrative monitoring procedure. The organizations must fulfill the order within the prescribed period and submit a report to relevant regulatory institutions (e.g., Rosobrnadzor) on time.

If the organization fails to submit the compliance report after the prescribed period ends, administrative action will be taken against the organization. If the compliance report is submitted on time but does not clearly outline the measures taken by the organization or does not seem consistent, public authorities may consider making a thorough inspection of the organization in question, besides taking other measures. We believe that the recipients of legal acts of state legal assistance may experience difficulties in interpreting administrative regulations correctly, since, quite often, such documents seem large, alien, and difficult to comprehend. Therefore, additional clarifications on the consequences of non-compliance with legal acts of state legal assistance may encourage legal entities to comply with them.

6. Educational and axiological function. Legal acts of state legal assistance not only persuade legal entities to follow their provisions but also clarify the essence of given instructions and explain the violations that legal entities may have committed. That affects the recipients in the process of consideration and execution of legal acts of state legal assistance, instills a certain system of values and willingness to comply with the law into legal entities, thus, raising their legal awareness and culture as well as forming a positive attitude toward law as a value.

T.N. Radko points out that the educational aspect of law represents an independent direction of its influence on the will, thoughts, and feelings of people, which may occur unconsciously regardless of the presence of a formally organized educational process. It is well-known that one of the most important directions, in which law influences social relations is education [13].

Legal acts of state legal assistance represent an institutionalized form of the educational process and are

the most important tool in legal education. Receiving, studying, and reflecting on legal information by recipients of a legal act of state legal assistance has a direct impact on their consciousness, will, and actions, guiding them toward a lawful and creative behavior. It is legal awareness that ultimately determines the behavior of legal entities, which may or may not result in legal consequences.

In the course of the execution of legal acts of state legal assistance, their recipients become aware of the practical principles of justice and the rule of law, legitimate interests, and legal obligations of individuals, which in the end leads to the formation of consistent positive attitudes toward law and order.

The impact of legal acts of state legal assistance on values has three directions, namely, toward the recipient of the legal act, toward the law enforcement institution that issued it, and toward the subject (the bearer of rights). The social and legal value of the aforementioned acts lies in the fact that they are aimed at legal assistance in the exercise of legal opportunities.

The legal acts that we are discussing contain an assessment of the recipient's actions and an analysis of a specific problematic situation. These acts characterize legal rights, legitimate interests, and legal obligations from the value perspective. Besides, they affect the needs of the legal entities (the bearers of rights) and serve to the recipients as a value orientation when choosing a behavioral model.

At the time of making a decision whether or not to execute a legal act of state legal assistance, the value perception of such acts plays a significant role, since, along with other factors, it is up to the legal entities to determine which behavioral model they will follow. When the recipients execute a legal act of state legal assistance, they exercise rights, legitimate interests, or legal obligations. Therefore, the law in general and legal acts of state legal assistance, in particular, earn respect, as a result. Other legal entities, in turn, start realizing the value and significance of these regulators of social relations, which results in their willingness to cooperate with state institutions and assist them.

Respect for the law may only be achieved when legal entities are confident that their rights, legitimate interests, and legal obligations will be duly protected by the state institutions, and, if necessary, assistance will be provided in order to ensure their effective exercise.

The axiological function of legal acts of state legal assistance is applied not only toward individuals and organizations but also toward public officials and state institutions. The psychological effect of legal norms on law enforcement officers is enhanced by the fact that such norms are mandatory, and that citizens believe in the fairness of decisions made by law enforcement institutions, and expect that those institutions themselves fully comply with the law. The constitutional obligation of all officials and public institutions to base their actions on the law leads to the creation of a mentality that respects legal rules and regulations and treats them as the primary factor that determines law enforcement.

4. CONCLUSION

According to the results of the study, it seems theoretically justified and practically necessary to further study legal acts of state legal assistance for the exercise of rights and legitimate interests, including the boundaries of their types' diversity, hierarchy, legal technique, issues of correlation with regulatory legal acts, and implementation mechanisms. Legal acts of municipal legal assistance, as well as issues of systemic interaction of legal acts of state and municipal legal assistance, require similar comprehensive consideration.

ACKNOWLEDGMENT

This article was prepared with financial support from the grant of the President of the Russian Federation No. MD-721.2018.6.

REFERENCES

- [1] N.V. Isakov, A.V. Malko, O.V. Shopina, *Legal Acts: General Theoretical Aspect of the Research Jurisprudence* 3 (2002) 18.
- [2] V.Yu. Panchenko, *Legal Assistance in the Exercise of Rights and Legitimate Interests: Methodology, Theory, Legal Policy*, Orbita-M, Moscow, 2015, pp. 131, 146
- [3] H.M. Lell, *Legal Decisions as Individual and Social Acts at the Same Time. Some contributions from a Parallel with Linguistics*, *Revista de Llengua i Dret* 65 (2016) 36.
- [4] S.I. Ozhegov, N.Yu. Shvedova, *Explanatory Dictionary of the Russian Language*, Moscow, 1996, p. 19.
- [5] J. Visconti, *Speech Acts in Legal Language: Introduction*, *Journal of Pragmatics* 41(3) (2009) 393.
- [6] V.Yu. Panchenko, *Legal Interaction as a Type of Social Interaction*, Prospect, Moscow, 2015, p. 188.
- [7] E.V. Berezovskaya, *Legal Interpretation and Individual Legal Regulation*, candidate dissertation, Kazan, 2005, 213 p.
- [8] N. Bagley, *Legal Limits and the Implementation of the Affordable Care Act*, *University of Pennsylvania Law Review* 164(7) (2016) 1715.
- [9] M.R. Cowart, *Understanding Acts of Consent: Using Speech Act Theory to Help Resolve Moral Dilemmas and Legal Disputes*, *Law and Philosophy* 23(5) (2004) 495.
- [10] R.A. Duperron, *Interpretation Acts - Impediments to Legal Certainty and Access to the Law*, *Statute Law Review* 26(1) (2005) 64.
- [11] S.A. Komarov, I.V. Rostovschikov, *Personality. Rights and freedoms. Political system*, Publishing house of the Law Institute, St. Petersburg, 2002, p. 76.
- [12] L.V. Tikhomirova, M.Yu. Tikhomirov, *Legal Encyclopedia*, Yurinformtsentr, Moscow, 1997, p. 25.
- [13] T.N. Radko, *Theoretical and Methodological Issues of the Socialist Law*, 1978, p. 40.