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QUALITY CRITERIA OF THE ACTIVITIES OF A LAWYER IN CIVIL PROCEEDINGS

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Abstract

The relevance of the research of the criteria for the quality of lawyer services in the Russian Federation is reasoned by the need to ensure state constitutional guarantees in the provision of qualified legal assistance to citizens, law protection of rights, freedoms and interests. In this regard, this article is aimed at the determination of the criteria for the quality of work of a lawyer and their formal interpretation with a view to the subsequent development of regulations controlling the procedural activities of a lawyer. The research methodology is reasoned by the need to analyze existing approaches to determine the criteria for the quality of legal services (positive, negative, prudent) and identify the boundaries and possibilities of their use as the tools for the assessment of the quality of the procedural activity of a lawyer. The article presents the positions of national experts on the theory and methods of the assessment of the quality of legal services, provides their constructive analysis and formulates a key criterion for the quality (effectiveness) of advocacy: the exhaustion of all the possibilities provided by law to ensure the interests of a client. In general, quality standards need more detail consideration in order to consolidate formal features in the regulatory document at the state level – criteria – which make it possible to solve the question of the lawyer's responsibility to the claims of a principal in case of his dissatisfaction with the rendered services in a most clearly regulated manner.

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1. Introduction

The quality criteria of the legal services of a lawyer are a conventional tool that allows organizing the work of a lawyer in such a way that multilateral relations “lawyer community-lawyer-principal-law enforcement system” has predictability, which in turn is an indicator of the civilization of legal relations in society. Although the access to justice is one of the principles that are already sufficiently developed both in national and international law, according to the studies of Gruodytė and Kirchner (2016), little attention had been paid to the links between legal assistance and human rights until 2005. That is, various international norms and standards establishing the responsibility of the state for the provision of legal assistance (International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the United Nations Basic Principles on the Role of Lawyers, European Court of Human Rights, the EU Charter of Human Rights) do not directly address the issue on how to ensure the provision of legal aid, and do not proclaim legal aid as civil political law (Gruodytė & Kirchner, 2016).

It is worth agreeing with Melnichenko (2010), who rightly remarked that “it seems indisputable to establish the standards of quality for advocacy services, and the issue is clearly overripe” (Melnichenko, 2010, p. 26). It is difficult to find the antithesis to this statement, since the mentioned purpose – the achievement of a civilized level of legal relations – can hardly be disputed. Therefore, it can serve as a starting point for the justification of the relevance of research in the search and substantiation of clear, unconditional criteria for the quality of legal services of a lawyer.

It is difficult to disagree with the statement that “All that a lawyer can guarantee is a high-quality execution of all procedural documents and professional representation of interests” (Polyakova, Polyakov, & Baranova, 2017, p. 469). However, it does not explain what “quality design”, “professional representation” is. It is unclear how a principal can verify this without necessary competence, and what objective quality verification tools can be used for these purposes.

2. Problem Statement

Nowadays, there is no formal definition and list of quality criteria for legal services of a lawyer in national code of law. However, the attempts to approach this definition, to enter the stage of standardization in the provision of legal services have been repeatedly made and are being made both at public and at state level. There is a fundamental possibility of the development and establishment of such criteria, as evidenced by the analogy:

there are developed normative criteria to assess their quality (national standards; technical regulations; quality certificates; commonly applicable requirements for goods and works of the corresponding type; suitability for use established by a contract or the normal use of a product, the result of work of this type within a reasonable time). (Nakushnova, 2013, p. 47)

It is possible to agree with the opinion of researchers justifying the need to develop common criteria for the assessment of the quality of legal services (Gorovenko, 2012; Melnichenko, 2013; Voronov, 2008), but now it is not clear what status should these criteria have: the status of state fixed coordinates, or accepted by professional associations (Kazun & Yakovlev, 2017). It is obvious only that

“it is necessary to introduce normatively certain requirements for the quality of legal assistance provided by a lawyer” (Melnichenko, 2010, p. 28).

3. Research Questions

The subject of the research is the approaches to the assessment of the quality of the services of lawyer in the Russian Federation and the criteria of the quality of procedural activity of a lawyer in a civil process.

4. Purpose of the Study

The purpose of the research is to determine the criteria of the quality of the services of a lawyer and their formal interpretation with a view to the subsequent development of regulatory provisions controlling the procedural activities of a lawyer in a civil process.

5. Research Methods

In the field of the study of the criteria of the quality of legal services, there are several approaches within which the aspects related to the studied phenomenon are systematized. In particular, the division into positive, negative and prudent approaches is established. These approaches are investigated on the basis of analytical, comparative methods, as well as using conceptual analysis.

6. Findings

A positive approach, expressed in a direct assessment of the activities of lawyers, is the most widespread among experts.

In the interpretation of Nakushnova (2013) the criterion for the quality of legal services determines "the conformity of the actions of a lawyer with procedural norms, as well as substantive legal norms. Accordingly, it is necessary to add the competence and professionalism of the contractor to the criteria already existing for the quality of legal services" (p. 50).

In fact, this approach could be called client approach. This is explained by the fact that the degree of satisfaction of client with the quality of the services provided by is the most obvious criterion for the quality of service. It is indeed the case in a significant number of cases. During the extension of the general principle of feedback in the sphere of services to the assessment of the quality of legal services, there is the statement that the quality "... should be evaluated solely by measuring the client's perception of the service and its individual features" (Polyakova et al., 2017, p. 474).

Due to its self-evidence, this approach is widespread in legal practice. In particular, this is the case in the Republic of Belarus: client satisfaction is an indicator of the quality of legal services in the legislation of this country. This advantage of this approach is that it has a solid base – the subject of the assessment of the quality of legal services is defined. However, there is reason to believe that the strength of the foundation of this approach is controversial.

First, subjective satisfaction cannot be a quality criterion, since this basis is not verifiable.

Secondly, it is necessary to take into account the specifics of a lawyer, and his relationship with a principal. In cases when there are no other factors between the producer of a service, its consumer and the result of the rendered service, the relationship is simple in nature, allowing establishment of a direct causal relationship from action to result. However, in the case of the provision of services by a lawyer, the factor of the assessment of this work by such a significant subject as a judge is placed between his work and its final result for the principal. In this situation, the client approach to the assessment of the quality of work of a lawyer may be oversimplified. The question is not in the level of competence of a client to assess the quality of the services provided to him by a lawyer, but in the fact that the level of his competence does not affect it in any way.

According to the opinion of the experts, “it is necessary to consider the statement of absolute probability of winning a suit or achieving another legal result, as well as informing a client that a lawyer guarantees the achievement of the goal in any circumstances as a violation of the requirements for the quality of legal services. Such statements should be qualified as intentional misrepresentation” (Polyakova et al., 2017, p. 473). The doctrinal basis of the statement that customer satisfaction cannot be a criterion of the quality of a lawyer's activity is the aforementioned information letter of Melnichenko (2010):

The lawyer's fee is based on the labor spent, not the result. The subject of the contract between the lawyer and the principal is not the result (for example, a positive decision of the court in the case), but the activity of the provision of legal assistance (p. 29).

which was reflected in the position of the Presidium of the Supreme Arbitration Court of the Russian Federation of September 29, 1999. “On some issues of judicial practice in the consideration of disputes related to contracts for the provision of legal services”.

The limitations of this approach to the formation of quality criteria are the fundamental professional independence of a lawyer, the essence of which is that a lawyer, within his competence, determines the need and procedure for significant procedural actions and determines the content of the necessary procedural documents.

A negative approach to the substantiation of quality criteria is based on the negative factors of lawyer's activity. Nakushnova (2013) showed the criteria for the quality of legal services through a negative result in the following way:

In connection with this, the performer's responsibility for non-fulfillment or improper fulfillment of the obligation arising from the contract for the provision of legal services, including the form of a reduction of the fee of the performer, can be as follows: unreliability (inaccuracy) or incompleteness of the information provided to a client, including the lack of awareness of a contractor about the current state of acting legislation, and as a result the lack of knowledge of material, procedural law; factual or legal errors in the preparation of legal documents; the incompleteness of the prepared package of necessary documents for civil transactions; the loss of customer documents, disclosure of confidential information. (p. 49)

As Melnichenko (2010) suggested the criteria by which the quality of legal assistance is assessed in practice are obvious and indisputable, in objective terms it is “noncompliance or improper fulfillment of the requirements and (or) violation of the prohibitions established as the Law on the Bar, the Code of

Professional Ethics of a Lawyer , by the decisions of the bodies of the bar, adopted within their competence, the agreement on the provision of legal assistance, and the existing material (Civil Code, Criminal Code, etc.), procedural (Code of Civil Procedure of the Russian Federation, Code of Criminal Procedure, etc.) (Melnichenko, 2010). Agreeing with the assessment of the factual side of the matter, it is impossible to notice that this list does not indicate the criteria for the inadequate quality of the provided services, but directly indicates the hypotheses of legal acts, the norms and provisions of a contract, which does not allow revealing the certainty of the quality criteria of legal services directly.

A prudent approach is based on the prospect of the assessment and control of the quality of legal services by the institutional bodies of lawyer associations. In particular, formal qualifications and professional suitability are used as quality criteria in the assessment of the activities of lawyers in Kazakhstan, Ukraine (Trofimyuk, 2017), Romania (Eva, 2015). In this approach, collegial organizations of lawyers are recognized as an entity, evaluating the activities of a lawyer most often by formal criteria, which is nothing more than certification of documents confirming the qualification of a lawyer.

According to the analysis, the essence of all existing approaches to the determination of the criteria for the quality of a lawyer's services is in the determination of the key subject for the assessment of this quality. That is, to dispute the quality and raise the question of quality can only one or another entity, namely: a client or collegial bodies, that is, the subjects of legal relations, in the interaction of which the activities of a lawyer are carried out.

However, in the above mentioned approaches, such a subject as a court did not find its clarification. It is possible to state that a court is one of the important entities that influence the assessment of the quality of the procedural activity of a lawyer. Since trial process, the subject of which is a lawyer, is of competitive nature, so far a court determining the outcome of this contest is an objective measure of the quality of legal activity. This approach has something in common with client approach in terms of the effectiveness of its work. Meanwhile, a court is also the subject of a formal quality assessment.

According to the decision of the Presidium of the Supreme Arbitration Court of the Russian Federation of September 24, 2013 No. 4593/13 in the case No. A41-7649 / 2012, "legal services are recognized as low qualitative if a contractor did not inform a customer about the changes in the legislation and this led to the losses. There are no grounds for the qualification of legal services as substandard if there is no documentary justification, for example, the text of a judicial act, from which it is possible to establish the incompetence of an executor or an unfair execution of procedural obligations that entailed losses on behalf of a customer (The decisions of the arbitration court of appeal of 05.03.2013 in the case No. A21-2375 / 2012, of the arbitration court of appeal dated 03/11/2013 No. 05AP-1304/2013). A court can give the assessment of the quality of the legal services provided on the basis of such criteria as the representative's possession of "scientific doctrines, knowledge of the development trends of the legal regulation of disputed institutions in national legal system and legal systems of foreign states, international legal trends on a controversial issue" (Definition of the Supreme Arbitration Court of the Russian Federation from 11/19/2013 No. BAS-16291/10), in addition, to determine the quality of the legal services, criteria for the quality of the work of a contractor under a contract may be applied, but in

the absence of the causal relationship between the actions of a contractor and the losses (expenses) of a customer, the provision of services cannot be considered inappropriate.

The analysis of the work of researchers and judicial acts allows concluding that the concept of quality criteria often includes the reasons and conditions for the quality of the activity of a lawyer, that is, some reasons why the activities of a lawyer do not meet the expectations of an evaluating party. Taking into account that the term “quality” does not have the necessary categorical certainty, it would be more correct to use the term “productivity” instead. This is particularly true in the sense that it is productivity that is understood as quality in order to be able to evaluate effectiveness using certain criteria, abstracting from the most direct result, since its presence, although it largely depends on the work of a lawyer, is not entirely determined by it. In our opinion, the criterion for the evaluation of the effectiveness of a lawyer can only be presented by the exhaustion of all the possibilities provided by law to ensure and protect the rights, freedoms and interests of a principal.

Polyakova et al. (2017) determined the groups of criteria: “professional criteria; procedural criteria; criteria from the point of view of customers” (p. 470). This systematization is a reflection of the three dominant approaches. However, this system does not have an instrumental function, so it cannot be applied without taking one of the approaches as the main one. The largest number of criteria given here are conditions and not signs of quality. The criteria corresponding to the definition formulated in this study are presented by some of the “procedural criteria”, namely: “4. Provision of services in accordance with legislative standards; 5. Development of possible solutions to the problem and informing a client about it” (Polyakova et al., 2017, p. 469). At the same time, for the task of the most closely developed defense of an advocate from the claims of a principal, when a principal subjectively considers the defense of his interests in court unsatisfied with his expectations, these groups of criteria may be applied. Therefore, in general, the achievements of Polyakova et al. (2017) may be useful in the development of a set of quality standards for the activities of a lawyer. However, the approach by Melnichenko (2013), who proposed to correlate quality criteria with the standards of a lawyer, may be considered as one of the most reasonable.

7. Conclusion

It seems that the quality of the activity of a lawyer in civil process can be most adequately assessed by the comparison of it with formal standards of activity. The basis of this comparison is the definition of quality: the quality criterion is a sign, the presence of which allows objectifying the quality itself, that is, the presence of signs, the totality of the signs of a phenomenon that allows fixing this phenomenon, as Kudryavtsev (2009), bringing this phenomenon into the sphere of self-evidence.

The developed criteria of the quality of legal services, subsequently expressed in the relevant standard of a lawyer in a civil procedure, will contribute to the provision of state constitutional guarantees. With their help, it will be possible to realize the content of the right of citizens at a practical level, namely, to enable a citizen to compare the quality of the legal service with the established criteria. For a service provider, this may mean that his “unqualified actions in judicial defense process may become the basis for reviewing or canceling a court decision in connection with a violation of the rights of citizens” (Polyakova et al., 2017, p. 472).

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