

Access to justice

From the People's Advocate Institution, special attention is paid to the approval and implementation of law no. 111/2017 "*Law on legal assistance guaranteed by the State.*"

While considering the legal assistance guaranteed by the state as a fundamental right, as part of the right of access to justice, also, taking into account the high number of complaints submitted to our institution, we are focused on the implementation of the law, issuing bylaws, the establishment of structures provided in and its effectiveness, for the guarantee of this service by the state.

Thus, the People's Advocate has played an essentially active role in addressing the Ministry of Justice recommendations regarding the issues assessed to be resolved regarding implementing all legal state mechanisms, as provided in the law above. We appreciate that the recommendations are welcomed by the Ministry of Justice and the Directorate of Free Legal Assistance that we have had ongoing cooperation.

This law was drafted to provide a better, more efficient service and closer to the people in need, bringing the relevant structural and procedural changes in the benefit of free legal assistance, providing from the responsible institutions the legal guarantees so that citizens can equally enjoy it their fundamental rights.

The law sanctions the procedures for getting free legal assistance and guaranteed by the state in the form of immediate legal assistance (providing information and legal advice) or secondary legal assistance (providing legal aid and providing protection before the court). The Ministry of Justice has set up and operates the Directorate of Free Legal Assistance, providing counseling.

Currently, several centers of primary legal assistance have been established and operating in several country cities. Secondary legal aid is also provided in the courts through a legal representative (private lawyer) after submitting the relevant request and the documentation that proves the fulfillment of the criteria as defined in law.

According to law, those who can benefit are the particular categories such as victims of violence, children, etc., and those with insufficient income and wealth (older people).

For an efficient way of this process and the benefit of these services provided by the categories as defined by law, we acknowledge that not only the adoption of law no.111/2017 but the cooperation of all actors involved in this law, with their respective responsibilities and obligations, it is necessary to make it functional and effective.

In the institution of the People's Advocate, we have dealt with several cases of citizens who have benefited by court decisions for free legal assistance and exemption from payment of court fees and costs; still, they have not been implemented by the Chambers of Advocacy, by not appointing attorneys in providing secondary legal assistance and so by denying to the applicants their fundamental right provided by the Constitution for equal access to the justice system.

The right of access to justice guarantees to the violated subjects the right to go to court, which will hear their claims and announce a decision after a fair and public trial. The Constitutional Court has consistently assessed that good administration of justice begins with guaranteeing that an individual has access to court to provide him with all aspects of a judicial form of examination of the case. In case this right is denied, the process is considered irregular because access to court is, first of all, a key condition for realizing the protection of other rights of the individual. The rule of law can not be assumed without recognizing the right of individuals and their opportunity to go to court¹

We estimate that even though the chambers of advocacy are not institutions of public administration and the People's Advocate does not extend his mandate to these offices, in the specific case of the provision of secondary legal assistance guaranteed by the state, they are part of a chain together with other state institutions providing the service. In this context, the lack of cooperation with the People's Advocate institution to implement a court decision and guarantee free legal assistance to citizens within the framework of a regular process of law shows substantial negligence.

Decision no.52, 14.11.2014 of the Constitutional Court

Decisions no.17, dated 18.07.2008; no.5, dated 06.03.2009; no.48, dated 24.09.2014 of the Constitutional Court

¹ Decision no.52, 14.11.2014 of the Constitutional Court

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