

**SLCMC 2021**

International conference «State and law in the context of modern challenges»

**NON-DISCRIMINATION IN THE PROTECTION OF A VIOLATED  
SUBJECTIVE LAW**

Natalya N. Tkacheva (a)\*, Olga V. Nikolaychenko (b), Natalya A. Baturina (c)

\*Corresponding author

(a) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, nntkachewa@yandex.ru,

(b) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, olga-nikolajchenko@yandex.ru,

(c) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, nataljabtrn@mail.ru

**Abstract**

The deviation of judicial protection from international standards cannot be explained by domestic objectives or by additional guarantees aimed at empowering some and infringing on others. This research is based on a concrete and abstract manifestation of the problem, which is the impossibility of restricting access to the information necessary to use established legal mechanisms and institutions that have been influenced by time. Equal access attributed by free legal aid and guaranteed by a set of legal institutions and agencies provides non-discrimination as the right an access to justice. Non-discrimination determines the obligation of the state to provide legal assistance to socially unprotected categories of citizens. The authors argue that the right to receive free legal aid in the protection of the violated subjective law should also be maintained in the socially significant categories of cases. In this regard, States are encouraged to organize legal aid programmes to allow legal entity access to the courts, even with global digitalization. The widespread digitalization of modern society has inevitably led to a violation of human rights. The lack of equal access to justice due to unrealized opportunities for remote interaction, the right to address government agencies and authorities actualize the global problem setting to be addressed by states through free legal aid programmes. The implementation of the programmes will be facilitated by measures aimed at making information available to obtain free legal aid and the entities providing it.

2357-1330 © 2022 Published by European Publisher.

*Keywords:* Digitalization, free legal aid, non-discrimination, protection of infringed subjective law

## 1. Introduction

With the onset of the Covid-19 pandemic, the basic tenets of objective law, guaranteed by international standards and minted by decades of national legislation by a number of countries, have been shattered. Legal non-discrimination, which strengthens a number of legal institutions and regulates the provision of qualified legal assistance to everyone, is among them (Krysina et al., 2020). Skilled legal aid is the ability to provide a quality service (Danser, 2019) or to create conditions for communication between the parties to the conflict, which generates a legal dispute before going to the courts. The criteria of legal assistance that separates it from the provision of other legal services include the professionalism of the entities providing it and the timeliness (Krysina et al., 2020). The mission of the state should be systemic control for providing legal aid, especially on a gratuitous basis. Every modern state, expressing concern for the common good (legality and tranquility) should provide free legal assistance to migrants ("Biba v. Greece," No. 33170/96), persons with diseases and disabilities ("Quaranta v. Switzerland," No. 33170/96) and others in need of it.

As our observations show, during the pandemic, citizens who could afford paid legal services, but who for some reason decided not to use them, also began to apply for free legal aid more often. Provision of free legal aid to socially vulnerable subjects, without establishing any restrictions, is a certain indicator of a developed society and the attitude of the state to its members, expressed in the creation of necessary, accessible conditions for the provision of such legal aid.

## 2. Problem Statement

The pandemic has made changes in the lives of all citizens, regardless of their place of residence, gender, race and nationality. At the same time, life has not stopped, the problems that existed before this event, such as housing issues, employment issues, protection of children's rights, family legal relations have become particularly acute and needed legal protection, first and foremost - judicial protection. Many citizens were left alone with their problems and did not know how to get protection of the violated right, where and in what form to get legal aid. Creating conditions for distance communication by citizens to State bodies, including judiciary, has not brought a positive result. The widespread digitalization of modern society has inevitably led to a violation of human rights. Lack of equal access to justice due to unrealized opportunities for remote interaction, the right to address public institutions and authorities, the lack of effective procedures for resolving issues of subsidized legal aid through the prism of justice, the restriction of the right to be heard were the result of the failure to realize the constitutionally guaranteed human rights and citizen rights (Ginsburg & Tyler, 2021). Many legal practitioners believe that the consequences of the events of 2020 will inevitably lead to a reduction in funding for free legal aid from the state, which in turn will have a negative impact on the guarantees of judicial protection.

## 3. Research Questions

The pandemic, which has affected all procedural and other legislative guarantees, admittedly, has paralyzed the effective contact of public-legal and other institutions whose job responsibilities included

the providing qualified legal assistance, primarily to explain the prospects for litigation and to make relevant applications. The justice system in Spain is characterized by systematic delays of time limits for consideration and resolution of civil cases, which were most pronounced during the period of the pandemic and the technological backlog (Minder, 2020). Spain's already imperfect judicial system has been severely tested. The pending cases, as well as those that came during the pandemic, are of concern to experts. The politicized, backward, paperwork-drowned Spanish justice system does not meet today's demands for digitalization and the effectiveness of protection of violated rights. The situation is very different in the area of judicial protection of citizens' rights and legal aid, for example, in England. Courts are a vital public service, the Chief Justice of England and Wales has said. Discrimination in the consideration of cases was inappropriate and the delay in the administration of justice was unacceptable and comparable to the denial of justice. This position of the State demonstrates a high degree of responsibility to society and a desire, regardless of any circumstances, to ensure the guaranteed rights of citizens. UK courts have long adapted to remote work, systematically introducing digitalization into justice (Welsh & Hart, 2020).

A number of States, following The Recommendation No. 93 1 "Effective Access to the Law and Justice of low-income segments of population" are expanding the scope of free legal aid through the out-of-court process. In Japan, for example, there is a fund to assist minors, through which targeted free legal support is provided (Rekhovsky, 2016).

Uneven computerization with a lack of widespread software skills and judicial support affects the implementation of the procedural opportunities for participants in court proceedings, especially if they are limited by health or financial capabilities. In Russia, the prosecutor's office and the executive branch (Chumakova, 2019) are successfully working to overcome legal barriers, which contribute to creating conditions for the realization of the right of every citizen to judicial protection. In a number of categories of cases that have different social component, such assistance is provided, but not always. The reasons are different. This is the absence of expression of the person's will (objective and subjective) and the inability of individual to become "heard". Thus, during the pandemic most human rights institutions were "frozen" and therefore unable to fulfill their functions. In this regard, non-state/voluntary organizations that assist in quasi-judicial forms of dispute resolution exclusively of private and legal nature of a certain group of civil rights entities (Malyutina, 2019) are the most popular. This is due to their flexible forms of activity regulation. Such organizations which are most responsible reacting could provide assistance remotely without any procedural regulation and organizational and legal complexity. An example is the Legal Clinic of the Federal State Budgetary Educational Institution of Higher Education "Saratov State Law Academy", which for more than twenty years provides qualified legal assistance to citizens living in the Saratov region.

With limited access to justice due to the pandemic, it is critical to gain a better understanding of effective and efficient legal services. In some countries during the pandemic, self-help centers for citizens who choose to represent themselves in court without the assistance of a lawyer have become active. In the U.S., for example, self-help centers use various models to provide legal advice and information by unrepresented lawyers in a lawsuit. It is not uncommon for self-help centers to be organized on the basis

of courts. Courts have responded by creating programs and legal services to help litigants represent themselves.

Circumstances of an objective nature, widespread digitization, accelerated by the impact of the pandemic allowed one to quickly adjust the new forms of interpersonal interaction, such as phone, chatbot on the official website of the organization, video conferencing and social networks of official accounts (Bhatia & Tessuto, 2020). A positive aspect of the use of modern technologies, in particular social networks, is the creation of a trusting atmosphere of communication between citizens and entities providing assistance (Appleby et al., 2019).

Meanwhile, research has shown that many chat and social media users do not understand what next steps they need to take to solve their legal problem after receiving remote legal advice (Summers et al., 2019). Remote provision of advice does not provide legal assistance to persons who do not know how to use the Internet and computer equipment or do not have the technical capacity to do so. Moreover, at present, for various reasons, there is a distrust of the remote format in the legal consciousness of some citizens (DoCarmo et al., 2021). In this context, there is an urgent need to make additional efforts to reduce the different types of digital divide and to help more users, especially those from socially disadvantaged backgrounds, to access and use digital technologies. Moreover, there is currently a distrust of the distance format in the legal consciousness of some citizens. This is partly due to the fact that the use of the remote format can create obstacles to the security and confidentiality of information.

Thus, non-governmental private dispute resolution mechanisms and modern litigation in a number of countries are in a process of transformation due to the security impact of digitalization. Digitalization should assist in the realization of a number of procedural legal guarantees of access to court. Scattered changes in the current law outside the systematic approach law enforcement activity to established principles of law reduces the value of regulatory provisions. Along with the optimization and simplification of procedural regulations, it is necessary to preserve the fundamental principles of the process, the inviolability of which will allow to solve the problems of our time. Optimization of proceedings and the realization of procedural rights and freedoms should become feasible and real, taking into account the new rules and procedures. Among the latter, widely implemented in different countries, is the increasing of participants' independence in choosing ways and means of protection of a violated subjective right. Independent receipt by participants of information about the movement of a case in court, the exchange of procedural documents in electronic form, awareness of the simplified procedure consequences in the cases consideration and others should be located and correlated with the fundamental principles of law.

#### **4. Purpose of the Study**

The purpose of the research is to develop theoretical provisions that reveal the conceptual features of non-discrimination in the protection of a violated subjective law, which cannot be justified by any proportionate restrictions caused by a pandemic and widespread digitalization. The paper aims to assess the impact of information technology on the implementation of the principle of non-discrimination in the provision of free legal aid as well as identify positive and negative correlations.

## 5. Research Methods

The methodological basis of the research is represented by a dialectical analysis that assessed the results of rule-making and law enforcement of a number of States. The comparative-legal method contributed to an objective assessment of implementation of widespread digitalization. The systematic method allowed one to interpret the categorical apparatus for studying of "non-discrimination". The legal modeling method has made it possible to formulate a behavioral model that should be accompanied by specific actions and measures aimed at informing the public.

## 6. Findings

Non-discrimination is a set of guarantees ensuring both the very possibility of recourse to judicial mechanisms and the mechanisms of judicial protection of the violated right. Non-discrimination is the requirement to organize the functional activities of authorities and institutions, which are being transformed in the context of today's global challenges. International perceptions of access to justice cannot be realized at the national level without their implementation in the organization of bodies and institutions designed to assist citizens in access to justice. Those who need to be protected by subjective right, should be protected at the level of legislative regulation with the distribution of the relevant institutions competencies. The arguments presented in this study outline the values of well-established principles of law that form the basis of national practices for the adjudication and resolution of private law disputes. Principles of law, as the most significant postulates, should facilitate the development and use of mechanisms to ensure access to justice and fairness of resolution of a private and legal disputes. Information technology, even more influential during the pandemic, should facilitate the application of well-established and guaranteed tenets of national and supranational law. The formation of new requirements for electronically generated documents, procedures and dissemination of pre-trial mechanisms should be correlated with the principles of publicity, transparency, openness and adversarial proceedings. In this regard, it is necessary to organize assistance to poor people, who cannot objectively use the mentioned procedures without the help of a calibrated legal assistant. It is unacceptable to transfer all actions to protect a violated right into the electronic-digital form without an alternative to "paper" production. It is proved that the successful introduction of universal digitalization provokes malicious actions / omissions and decisions of law actors on the part of institutions aimed at obtaining free legal aid. A special task is to inform the public about institutions and agencies that have adopted to a "new" format of interaction and to assist in obtaining qualified legal assistance.

Such innovations include: remote consultation of a specialist online, chat-bot (getting a written answer to your question asked with the help of a special program on a website or in social networks), etc. Bodies and institutions of state and municipal authorities should organize professional legal centers, the activities of which should become controlled and accountable.

## 7. Conclusion

In the context of widespread digitalization, there is a clear need to create and expand federal and regional programs to provide free legal aid, taking into account the epidemiological state, the needs of society. This is caused by "typical mass" appeals on similar problems, according to the technical capabilities of the population (the presence of the Internet, as well as modern technical gadgets). As part of any free assistance program, there should be procedures aimed at promoting free legal aid as a measure of social support for the pandemic-affected population.

Non-discrimination in the provision of such assistance should be the main principle of the development of federal and regional development programs for non-state institutions to provide free legal aid.

All public authorities and institutions providing legal assistance to socially unprotected categories of citizens should be taken to facilitate access to justice by taking appropriate measures to inform the public about the location, competence of the authorities and institutions providing qualified legal assistance. General information should be publicized and made publicly available about the manner and methods of access to the judiciary and other agencies providing free legal assistance, as well as on how it is provided and received by all those in need. Information should not be made by recommendations and legal advice on the merits and categories of the case, as well as procedural requirements for legal documents. The latter, which are diverse and complex in their legal compositions, should not "slow down" the exercise of the right to judicial protection, and much less infringe on subjective law, even in restrictions on publicity.

The lack of subjective equality makes it unacceptable to notify only the beginning of a trial. Increased access to electronic communications should not limit and presume the awareness of interested persons. Increased access to electronic means of communication should not limit and presume the interested persons' awareness of the trial entire course and its outcome. Undoubtedly, the expansion of information technology use can solve the problems of our time, caused by the lack of time of participants in the process due to their intensive work activities and the pandemic. However, the urgent tasks of reforming national legislation should take place without changing its legal foundations-principles that ensure equality of all and everyone in the implementation of procedural and legal mechanisms in protection of violated civil (private) subjective rights.

## References

- Appleby, S. Brockdorff, N., Fallou, L., & Bossu, R. (2019). Truth, trust, and civic duty: Cultural factors in citizens' perceptions of mobile phone apps and social media in disasters. *Journal of Contingencies and Crisis Management*, 27(4), 293–305. <https://doi.org/10.1111/1468-5973.12282>
- Bhatia, V. K., & Tessuto, G. (2020). *Social media in legal practice*. Routledge/Taylor & Francis Group. <https://doi.org/10.4324/9780429346088>
- Chumakova, O.V. (2019). *The activities of the executive branch authorities for the provision of free legal assistance* [Monograph]. Prospect.
- Danser, R. (2019). Moving from Evidence-Light to Evidence-Based Practice: Randomized Control Trials in Family Law. *Family Court Review*, 57(4), 491–500. <https://doi.org/10.1111/fcre.12442>

- DoCarmo, T., Rea, S., Conaway, E., Emery, J., & Raval, N. (2021). The Law in Computation: What Machine Learning, Artificial Intelligence, and Big Data Mean for Law and Society Scholarship. *Law & Policy*. <http://doi.org/10.1111/lapo.12164>
- Ginsburg, R. B., & Tyler, A. L. (2021). *Justice, Justice Thou Shalt Pursue A Life's Work Fighting for a More Perfect Union*. University of California Press.
- Krysina, N. R., Naryadchikov, V. N., Kalinkina, L. D., & Shigurova, E. I. (2020). Legal Assistance of A Lawyer In Checking A Crime Report. *European Proceedings of Social and Behavioural Sciences EpSBS*, 92, 2031–2037. <https://doi.org/10.15405/epsbs.2020.10.05.267>
- Malyutina, O. A. (2019). “Legal Clinics Will Help Everyone” or Who Can Recon on Free Legal Aid? *Lawyer*, 6, 72–76.
- Minder, R. (2020). *Spain's Courts, Already Strained, Face Crisis as Lockdown Lifts: Today's Paper*. May 26. Section A, p. 8 of the New York edition with the headline. <https://www.nytimes.com/2020/05/25/world/europe/spain-courts-coronavirus.html>
- Rekhovsky, A. F. (2016). Advocacy profession of Japan. *Eurasian advocacy*, 1(20), 17–22.
- Summers, L., Powers, B., & Walter, J. (2019). Perceptions of Remote and Walk-In Service Delivery in Family Law Cases. *Family Court Review*, 57(4), 501–514. <https://doi.org/10.1111/fcre.1244>
- Teplyakova, O. A. (2014). Constitutional right to free legal aid in light of international law standards. *Eurasian Legal Journal*, 10(77), 130–134.
- Welsh, M. H., & Hart, A. N. (2020). Keep Calm and Carry On: How English civil courts have adapted to lockdown. <https://essexcourt.com/keep-calm-and-carry-on-how-english-civil-courts-have-adapted-to-lockdown/>