

DOCTORAL THESIS IN BRIEF

Nguyễn Văn Tùng. *State management over legal aid activities by means of law in Vietnam today*

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Providing legal aid is the social function of the state; it has an important place and role in building a fair, democratic and civilized society. State management over legal aid activities, therefore, is an objective requirement based on certain theoretical and practical grounds. In Vietnam, theories on legal aid activities and state management over those activities by means of law are new issues in the legal science. These issues were only officially raised, thus demanding further research, since the Communist Party and the State set up a system to provide free legal aid for the poor and beneficiaries of social welfare, back in 1997. The practice of legal aid activities during the past years shows our weaknesses in doing research in the theoretical background of organizational and managerial sciences, including state management over legal aid activities by means of law.

Research student Nguyễn Văn Tùng chose the topic “State management over legal aid activities by means of law” as the research matter for his doctoral thesis with an aim to systematically clarify basic theoretical issues of state management over legal aid activities by means of law in connection with the

reality of such management in recent years.

Apart from the introduction, conclusion, and bibliography, the dissertation is composed of three chapters and nine sections.

In chapter I (p.19-82), the researcher clarifies theoretical grounds for state management over legal aid activities by means of law, especially those directly related to the practice of such management in Vietnam.

By analyzing common views towards legal aid activities and the characteristics of such activities, the author points out the nature of legal aid activities as “the fact that the state, through its administration, mobilizes social resources to combine with the state in providing free legal services for the beneficiaries of legal aid, bringing them conditions similar to others’ in accessing legal services to protect their legal rights and interests, hence ensuring social justice” (p.24). And in the researcher’s view, the concept of state management over legal aid activities by means of law should be understood as “the state’s constructing and using of legal instruments to create influence on management objects (the organization and operation of legal aid activities) to ever renovating, developing and mobilizing social resources to cooperate with the state in exercising its function of providing free legal aid for the poor and other beneficiaries of legal aid, thus

contributing to the realization of the goals of protecting legal rights and interests of the legally aided, enhancing legal knowledge and consciousness of respecting and complying with the law, ensuring social justice, building a socialist ruled-by-law state” (p.45). The author emphasizes that in order for legal aid activities to develop, the state needs to improve the contents of state management through legal instruments on all the three aspects: building law, enforcing law, and inspecting and handling violations of the law.

The author claims that state management over legal aid activities by means of law is manifested in three fundamental aspects, namely, 1/ the State builds and promulgates laws to organize and administer legal aid activities; 2/ the State enforces laws on legal aid activities; and 3/ the State inspects and handles violations. Apart from these, state management methods over legal aid activities are used to influence management objects in order to persuade, educate and support them to obey state regulations concerning their operation. These methods include administrative, economic measures and monitoring, inspecting, persuading and educating. Also, management forms are varied, from promulgating legal documents to concretize and instruct the implementation of legal rules, to promulgating documents to apply laws on judicial assistance; studying, summarizing and drawing up lessons from the country's own practical experiences as well as foreign countries' experiences; carrying out professional

activities like disseminating professional knowledge and skills, propagandizing for legal aid activities

In the last part of chapter I, the researcher puts forward some worldwide experience in managing legal aid that can be applied into Vietnam. Such experience is building a system of agencies carrying out legal aid activities, beneficiaries of legal aid, and experience in using different forms of legal aid.

In chapter II (p.83-147), the researcher goes further into analyzing and evaluating the real situation of state management over legal aid activities by means of law in Vietnam today (from 1997 up to now) in order to come up with conclusions and general evaluations, providing grounds for the proposed solutions in chapter III.

Before approaching the main content of this chapter, the author gives a brief presentation of state management over legal aid activities by means of law from 1945 to 1997 (section 1, p.83-89). In this period, activities to provide legal aid were only part of public assignments; legal aid activities of Bar Associations and lawyers' groups were not yet their official activities, there were no legal insurance measures nor support from the state; instead, legal aid activities were based on voluntariness, charity and humanity, with an aim to help the people and the realization of socio-political missions. State management over legal aid was approached not yet as a separate field but as an indirect state management of lawyers.

Some comments are drawn from the analysis of the real situation of state

management over legal aid activities by means of law from 1997 up to now (section 2, p.90-146) as follows:

About strong points: firstly, special importance has been attached to the making of laws, laws on legal aid have provided legal basis for regulation of social relations related to the organization and operation of legal aid activities; secondly, the enforcement of laws has been carried out and deployed, bringing about practical effects in building and strengthening the system of agencies and organizations providing legal aid activities; thirdly, forces of professionals, supporters and collaborators in legal aid have been formed and trained, beneficiaries of free legal aid have been identified; fourthly, the implementation of law of state legal aid organizations, lawyers' groups, legal consultancies, and international cooperation on judicial assistance have produced initial results.

However, state management over legal aid activities by means of law in this period still poses many shortcomings: firstly, there is an overall reluctance to change ways of thinking, a lack of synchronism and unity ...; secondly, enforcement of law, in many cases, yields low results, causing inadequate awareness of legal aid activities in state agencies, state employees in charge of state administration, those receiving legal aid and the society as a whole; thirdly, there are weaknesses in the organizational system of legal aid activities, and overlaps between the function of state management and the function of legal aid; fourthly,

participation in legal aid activities of social organizations and unions is not enough to meet the real demand; fifthly, the workforce in legal aid is still both small in number and low in quality; sixthly, there are unreasonable problems with capital investment and the use of this money in legal aid activities; seventhly, inspection and handling of violations are not yet deployed in practice ...

Chapter III: Views about and solutions to the enhancing the effectiveness of legal aid activities in Vietnam in its current phase (p.148-185)

Basing on the Party's views about perfecting the socialist ruled-by-law oriented state machinery, the research student reckons that the innovating and perfecting of state management over legal aid activities by means of law should be based on the following basic views: 1/ the state must stand on the viewpoint of building a ruled-by-law state in its management over legal aid activities, regarding legal aid as its social function; 2/ state management by means of law must ensure the policy of gradually socializing legal aid activities by guiding, mobilizing social resources to participate in and contribute to providing legal aid for the poor and other legally-aided; 3/ state management by means of law must stick to the view of not administrativizing (hành chính hóa) legal aid activities, the contents of state management need to selectively inherit recent practical experience, with reference to other countries' experience in implementing legal aid activities; and 4/ there must be a guarantee to perform

state management over legal aid activities by law, and prominence should be given to the role of legal measures, as well as other management tools.

In order to ensure state management over legal aid activities by means of law in our current phase, the following solutions need to be done, as claimed by the author:

- Continue to perfect laws on judicial assistance
- Innovate the dissemination, propagandization and education of laws on judicial assistance
- Strengthen the organization, machinery and human resource that are directly involved in legal aid activities
- Ensure capital investment, means of action and material conditions for legal aid activities

- Promote inspection and handling of violations in legal aid activities

- Innovate public awareness of the role and responsibility of lawyers in legal aid activities

- Innovate public awareness of state management over legal aid activities; gradually socialize legal aid activities

- Innovate the organization and operation of socio-political and the people's organizations

The dissertation was successfully defended in front of the examination board of state-level dissertations, met at the Ho Chi Minh National Academy of Politics and Public Administration in January 2008.

*Introduced by
HÀ CHI*