UDC 340.11

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Functions of legal guarantees of the rights and freedoms of human and citizen

In accordance with the functions of legal guarantees, in the legal literature, it is rather common to divide the latter into guarantees: implementation; protection; protection of individual rights and freedoms. In addition, the fundamental rights of freedom of man and citizen are fixed at the constitutional level as directly acting, which gives them the highest legal force with regard to law-making, law-enforcement, law enforcement activities of all state bodies and officials. Realization of rights and freedoms is impossible without their protection, there is no such right that would not need protection. Under the protection of rights and freedoms, one should understand the state of lawful realization of rights and freedoms under the control of state bodies, public organizations, officials, but without their intervention. Measures for the protection of rights and freedoms operate in conditions where the exercise of rights and freedoms is difficult, but the rights and freedoms are not yet violated. One of the defining criteria for the difference between «protection» and «protection» is the form of activity of the relevant actors involved in ensuring rights and freedoms. In many respects, the guarantees of the realization of rights and freedoms are provided by the possibilities of guarantees of protection and protection. Thus, we can draw the following conclusion that the existence of a law-based state is in itself a legal guarantee in a broad sense, since it is in such a state that «a genuine triumph of law and law, the inviolability of the rights and freedoms of citizens» is ensured. It is the rule of law that has as its goal the most complete guarantee of the rights and freedoms of man and citizen.

Keywords: legal guarantees, functions of legal guarantees, the realization rights and freedoms of human, guarantees for the protection rights and freedoms of citizen, guarantees for the protection of the rights and freedoms of the individual.

The classification criterion (sign) of the division of guarantees in general is the most diverse, the same can be said with reference to the functions of legal guarantees.

So, in accordance with the functions of legal guarantees, in the legal literature, it is common enough to divide the latter into guarantees: 1) implementation; 2) protection; 3) protection of the rights and freedoms of the individual [1; 13].

So, according to N.A. Bobrova «The means that contribute to the desired maximum of the state-legal phenomenon, act as «guarantees for», i.e. as a means to ensure the realization of the individual's subjective rights. «The funds that prevent the emergence of negative factors in the social» environment «of state and legal norms (or at least neutralize these factors) act as guarantees against» safeguards against abuses, etc. These safeguards include means of protection and protection.

Almost all scientists to the first group of legal guarantees, according to their functions, include the rules of law that establish the grounds for the appearance of certain rights and freedoms, their limits, the procedure for implementing procedural procedures for implementation, including the legal facts with which it is associated.

So, the very fact of their recognition by the state and the corresponding regulatory legal regulation can be the basis for the emergence of certain rights and freedoms of the individual. In addition, the fundamental rights of freedom of human and citizen are fixed at the constitutional level as directly acting, which gives them the highest legal force with regard to law-making, law-enforcement, law enforcement activities of all state bodies and officials.

The question of the extent to which rights and freedoms are realized by the individual, in our opinion, should be viewed from the point of specifying and detailing the limits of constitutional rights and freedoms. For example, V.N. Vitruk in the structure of legal guarantees for the realization of rights and freedoms singled out as an independent form — the specification of the limits (boundaries) of rights, duties and legitimate interests of the individual [2; 58].

N.S. Bondar, considering issues related to municipal rights and freedoms of a citizen, in our view, quite rightly notes that, accordingly, the rights and freedoms at the local level should be consolidated by their constitutional justification, both their concretization, and the establishment of a procedure, the implementation of relevant rights at the local level [3; 264].

The detailed nature of authority, in turn, occurs in two forms:

– firstly, by direct definition of possible variants of behavior. Thus, the definition of the boundaries of the content of freedom of conscience takes place through the granting of the individual's right to profess individually or jointly with others any religion or not to profess any, freely choose, have and disseminate religious and other beliefs and act in accordance with them.

– secondly, the specification of the boundaries of the content of constitutional rights and freedoms is carried out by pointing to a set of guarantees ensuring the proper exercise by citizens of constitutional rights.

An important condition for the correct evaluation of the scope and scope of constitutional rights and freedoms by the individual is a legal culture that enables active action to be taken in choosing the most acceptable behavior option aimed at the exercise of rights and freedoms. In addition, the level of political and legal culture of citizens is determined by how correctly the individual understands the limits, the boundaries of the exercise of constitutional rights and freedoms.

The implementation of constitutional rights and freedoms is not limited to the activities of competent actors to ensure the implementation of the rights and freedoms of citizens. An important role in the implementation of legal objectives is played by the owner of the right himself, aimed at the commission of lawful acts on the exercise of constitutional rights and freedoms. The realization of individual rights is largely determined by the personal attitude to their rights of the subjects of these rights. For «the realization of an absolute majority of rights requires the manifestation of at least a minimum of activity of the subjects». The issuance by law enforcement agencies of the necessary legal acts necessary to create the conditions for the correct, unhindered, safe implementation of the rights and freedoms of the individual constitutes its procedural and procedural order. However, in our opinion, it is necessary to remember that self-regulation by a person of one's behavior does not lose its value in the framework of procedural and procedural traditions of the realization of human and citizen's rights and freedoms. Participants in an orderly social relation in these cases will coordinate their behavior with this decision, which contains an indication of a personal measure of possible behavior [4; 7].

The procedural and procedural order of implementation of subjective rights, as is known, includes the issuance by law enforcement agencies of certain competent bodies. Acts are designed to create conditions for correct, unhindered, safe, and therefore, if necessary, controlled implementation of individual rights. Such an order should always be legislatively clearly regulated. Procedural and procedural order of realization of the rights and freedoms of the individual, carried out by the competent authorities, can not be considered in isolation, let alone oppose the process of the individual's understanding of the scope and boundaries of the content of his rights. These are links of the same chain. These types of activities are important guarantees for citizens to perform lawful actions to implement constitutional rights and freedoms.

Considering the legal guarantees of the realization of the rights and freedoms of the individual, or rather their elements, A.N. Savitskaya and V.G. Sokurenko points out that this concept includes: legal facts, the presence of which is necessary for the emergence of subjective law; – means that determine the boundaries of subjective law and the limits of its implementation; – Means of concretization of rights, freedoms and duties; – means providing procedural forms for the exercise of rights and freedoms of citizens [5; 75].

In the opinion of N.V. Vitruk, the elemental composition of these guarantees includes those stipulated by legislation: the specification of the limits (boundaries) of rights, duties and legitimate interests; – the legal facts with which their implementation is linked; – procedural forms of realization of the rights of citizens; – incentive measures and benefits [6; 105].

A different position is held by K.B. Tolkachev, who believes that the very delineation of legal guarantees for guarantees of implementation and guarantees of protection (defense) carries a very significant element of conventionality, although it does not deny the legitimacy of such a statement of the issue for research purposes. Realization of rights and freedoms is impossible without their protection, there is no such right that would not need protection. Security guarantees, which are structural elements of the mechanism for ensuring rights and freedoms, are at the same time guarantees for their implementation, that is, they can not exist outside the framework of the realization of rights and freedoms [7; 46].

As for the second type of legal guarantees in accordance with their functions - there is also no guarantee of protection of a common opinion in science. The question, first of all, rests on the definition of the categories «protection» and «protection» themselves, which are often used without disclosing the content and do not fully reflect the essence of the circle of human rights relations.

According to some authors, under the guarantees of the protection of individual rights and freedoms in society, it is necessary to understand the norms that establish control and supervisory functions of state bod-

ies and bodies of public organizations, as well as precautionary rules that determine the extent of responsibility of the obligated persons and bodies, if their actions or inaction hinder the normal exercise of the rights and freedoms of the individual. Of course, the guarantees of protection have the immediate task of restoring the already violated rights, measures and means for their restoration, i.e. In accordance with this position, before the violation of rights, protection measures followed, after - protection measures. Guarantees for the restoration of the violated right are examined here through guarantees of protection in a single meaning of their meaning. This position is controversial. Measures to protect rights and freedoms can not be applied after they have been violated, because they already need not to be defended, but to be restored. Under the protection of rights and freedoms, one should understand the state of lawful realization of rights and freedoms under the control of state bodies, public organizations, officials, but without their intervention. Negative factors are absent or insignificant and do not require the inclusion of measures to protect rights and freedoms. Measures for the protection of rights and freedoms operate in conditions where the exercise of rights and freedoms is difficult, but the rights and freedoms are not yet violated. However, from our point of view, the position of I.V. Rostovshchikov and Kh.A. Timershin, who, disagreeing with this, believe that the allocation of guarantees for the restoration of rights and freedoms is only an excessive theorizing that will only confuse the existing notion, since traditionally the restoration of the violated right has been completely covered by the notion of protection. Moreover, it is not clear what the authors understand under protection, describing it as an active interference in the implementation process by state bodies and officials with the aim of eliminating negative aspects that make it difficult or impossible to exercise personal constitutional rights and freedoms.

In our opinion, security guarantees should occupy a special place in the conditions of the formation of civil society, the rule of law. However, these guarantees alone are not sufficient to neutralize possible conflicts between officials and citizens, state bodies among themselves in the sphere of ensuring the rights and freedoms of the individual. Thus, one of the defining criteria for the difference between «protection» and «protection» is the form of activity of the relevant actors involved in the enforcement of rights and freedoms.

The application of the protection of the rights and freedoms of citizens means active intervention in the process of their implementation on the part of the said entities with a view to eliminating the negative aspects that make it difficult or impossible to exercise rights and freedoms, as well as their restoration in case of violations. Under the conditions of the guarantee of protection, the activities of state bodies, public organizations and officials are expressed mainly in the exercise of control and supervisory functions, in the improvement of legislation, taking into account the development of rights and freedoms of citizens, in the work to raise the level of legal awareness.

In general, the concept of «protection of the law» in law is often quite abstract and means the possibility of the state, its bodies to protect certain rights, without specifying whether it is a question of protecting violated rights or guarantees, forms of implementation of certain unbreakable rights.

Rights and freedoms are protected all the time, but they are protected only when they are violated. Protection is the moment of protection, one of its forms. These concepts do not match. Security is the establishment of a general legal regime, and protection is the measures that are taken in cases where civil rights are violated or challenged. Of course, the means (measures) of protection and the means (measures) of protection do not occur in a pure form, as the measures of protection to some extent perform the functions of protection.

In our opinion, the most correct position will be the one according to which the very notions of «protection», «protection» are independent, although they are connected in the process of ensuring rights and freedoms with each other. That is, in some cases, convergent and coincident, in others relatively isolated and existing quite independently.

In many respects, the guarantees of the realization of rights and freedoms are provided by the possibilities of guarantees of protection and protection. This is understandable, because legal means of protection and protection are designed, in the final analysis, to promote the lawful and most expedient use by citizens of the rights granted to them. At the same time, given that the provision of rights and freedoms is a system for guaranteeing them, including guarantees of protection and protection, the position of some authors, who understand by this term only guarantees of protection or only guarantees of protection, seems to be incorrect.

In general, the guarantees of protection can be determined through the institution of mutual responsibility of citizens and the state. It is in this area that the imbalance in the mutual duties and responsibilities of the state and citizens has clearly manifested itself. Until recently, citizens' responsibility to the state was much more effective. Obligations and responsibility of the state to citizens, in particular to strengthen the guarantees of their political and personal rights and freedoms, were more often declared than supported by the relevant legal mechanisms.

Obligations of the state arising and existing in connection with the granting of rights and freedoms to its citizens, as a rule, find their expression in the aggregate of the various guarantees written in the law, i.e. those conditions and opportunities that the state can and undertakes to create and submit to citizens for the practical implementation of the rights and freedoms proclaimed by the state.

This type of legal guarantees plays, perhaps, the most important role in protecting rights and freedoms from illegal actions of entities designed to create the most favorable conditions for citizens to exercise their rights and freedoms. It should be noted that for the owners of rights and freedoms, the guarantees of their protection, in the stated aspect, are not a factor restraining the process of realizing these rights. On the contrary, the task that these guarantees fulfill is precisely to create the most suitable conditions for the citizens to freely exercise the rights granted to them [8; 256].

The next element of the security guarantees was the norms that establish the control and supervisory functions of state bodies and bodies of public organizations.

Control and surveillance activities are defined as a set of control mechanisms that help determine the compliance of people's behavior with social norms; stimulates positive, useful for society activities and warns of negative. As a guarantee of protection, we also named precautionary norms. A considerable amount of scientific work has been devoted to the prevention of offenses, however, disputes regarding the definition of the concept are still being pursued.

In our opinion, guarantees for the protection of citizens' rights and freedoms can not be reduced to a combination of means that prevent and prevent violations of these rights by others.

In this sense, an interesting position in the literature is that, according to this, these guarantees fulfill two functions:

– the first - prevent the violation (establish boundaries) of rights and freedoms on the part of subjects obligated to citizens;

– the second - prevent facts of abuse of rights by their owners (citizens, officials).

In the latter case, legal guarantees for the protection of rights and freedoms are designed to correct the behavior of a person within certain requirements. This does not entail the restriction of citizens in their rights. Ensuring the correct use of a rule is impossible without its protection from possible misuse. At the same time, safeguard guarantees promote the correct implementation of norms by one's own presence. Thus, the main difference between legal guarantees of protection and legal guarantees for the realization of rights and freedoms is that, in fulfilling the task of preventing and preventing any infringement of their rights, the guarantees of protection are ultimately aimed at ensuring the direct realization of rights and freedoms. While legal guarantees of implementation create favorable conditions for the actual implementation of rights and freedoms.

Restoration of the rights and freedoms of the individual, as a rule, in the broadest sense is understood as a reaction of the state to the violated right of a citizen. A state that aspires to become a legal state can not fail to react to violations of the citizens' rights proclaimed by it in this form, since this would contradict its essence and purposes. As noted earlier, this is a defining feature of security guarantees [9; 80].

The guarantees of protection are aimed at eliminating the consequences of the offense and exhaustively resolve the issue that caused their application, for example, as a result of their implementation, the violated subjective law is completely restored and can be characterized as the primary legal norms having a limited program - restoring the violated right of imposing on a person, any punishment, penalty.

In conclusion, it is necessary to identify the following conclusions:

– legal guarantees can be implemented to varying degrees by all participants in public relations - state bodies, public associations, officials and citizens;

– legal guarantees in accordance with the functions performed are conditionally divided into guarantees of implementation, guarantees of protection and guarantees for the protection of individual rights and freedoms. In many ways, it is through legal guarantees that effective implementation of both protection and protection of individual rights and freedoms is possible, since it is precisely through legal norms in which the appropriate means and methods are indicated that this procedure takes place;

– legal guarantees establish the limits, the boundaries of the rights and freedoms of the individual, and this is an indispensable element of the existence of the individual in society, this is the function of guarantee;

– the existence of a law-governed state is in itself a legal guarantee in a broad sense, since it is in such a state that «the true triumph of law and law, the inviolability of the rights and freedoms of citizens» is ensured. It is the rule of law that has as its goal the most complete guarantee of the rights and freedoms of man and citizen;

– legality, as one of the signs of a law-based state, creates a real basis for the exercise of rights and freedoms. Legal guarantees of human and citizen's rights and freedoms and guarantees of legality are inextricably linked phenomena. Their demarcation is possible only logically in scientific knowledge. Strengthening and guaranteeing the exact realization by citizens of their rights and obligations is the most important means of strengthening the rule of law. Thus, compliance with laws is one of the main conditions for ensuring for every citizen a real opportunity to enjoy the rights and freedoms granted to him;

– all legal guarantees act in aggregate, forming an integral system with internal unity that contributes and is called upon to serve the process of realizing, securing, protecting and protecting the rights and freedoms of the individual. Systemic consideration of any complex social phenomenon allows us to see and take into account both the common features of all the structural units that make up the system and their peculiarities: on the one hand, the rule of law, which establishes rights and obligations, requires certain guarantees; on the other, fixing the rule of behavior and procedure, the very rule of law is a guarantee. That is why, in our opinion, we can define legal guarantees as the most important means of ensuring the rights and freedoms of the individual in modern conditions.

Legal guarantees can exist only in the framework of certain rules, procedures, giving them a clear, orderly character. Outside such procedures established by law, legal guarantees lose certainty and acquire an off-legal form, which gives rise to extremely adverse consequences.

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Д.К. Рүстембекова

Адам және азаматтың құқықтары мен бостандықтарын қамтамасыз ететін құқықтық кепілдіктердің функциялары

Құқықтық кепілдіктердің функцияларына сәйкес, құқықтық әдебиетте оларды іске асыру, қорғау, жеке тұлғаның құқықтары мен бостандықтарын қорғау кепілдіктеріне бөлу жеткілікті таралған. Бұдан басқа, адамның және азаматтың еркіндігінің негізгі құқықтары тікелей әрекет етуші конституциялық деңгейде белгіленеді, ол барлық мемлекеттік органдар мен лауазымды тұлғалардың заңшығарушы, заңдыорындаушы, құқыққорғау қызметін қамтамасыз етуге қатысты ең жоғары заңды күшке ие болады. Адам құқықтары мен бостандықтарын жүзеге асыру шегі туралы мәселені, біздің пікірімізше, конституциялық құқықтар мен бостандықтар шектерін нақтылау және бөлшектеу тұрғысынан қарастыру қажет. Құқықтарды және бостандықтарды іске асыру, оларды қорғамайынша, мүмкін емес, қорғауды қажет етпейтін құқық жоқ. Құқықтар мен бостандықтарды қорғау деп мемлекеттік органдардың, қоғамдық ұйымдардың, лауазымды адамдардың бақылауымен, бірақ олардың араласуымен емес, құқықтар мен бостандықтарды заңды күйде жүзеге асыру деп түсінген жөн. Құқықтар мен бостандықтарды іске асыру қиындаған жағдайда, алайда құқық пен бостандық әлі бұзылмаған болса, құқықтар мен бостандықтарды қорғау шаралары әрекет етеді. «Қорғау» және «қорғаныс» арасындағы айырмашылықты айқындайтын критерийлердің бірі — құқықтар мен

бостандықтарды қамтамасыз етуге қатысатын сәйкес субъектілер қызметінің түрі болып табылады. Құқықтар мен бостандықтарды іске асыру кепілдіктері көпшілігінде қорғаныс пен қорғау кепілдіктерінің мүмкіндіктерімен қамтамасыз етіледі. Сонымен, құқықтық мемлекеттің өмір сүруінің өзі, кең мағынада, құқықтық кепілдік болады деген қорытынды жасауға болады, себебі осындай мемлекетте «құқық пен заңның, азаматтардың құқықтары мен бостандықтарының бұзылмауының шынайы салтанаты қамтамасыз етіледі». Құқықтық мемлекет қана адам және азаматтың құқықтары мен бостандықтарын толықтай қамтамасыз етуді мақсат етеді.

Кілт сөздер: құқықтық кепілдіктер, құқықтық кепілдіктердің функциялары, адамның құқықтары мен бостандықтарын іске асыру, азаматтардың құқықтары мен бостандықтарын қорғау кепілдіктері, жеке тұлғаның құқықтары мен бостандықтарын сақтау кепілдіктері.

Д.К. Рустембекова

Функции юридических гарантий обеспечения прав и свобод человека и гражданина

В соответствии с функциями юридических гарантий в юридической литературе достаточно распространенным считается деление последних на гарантии: реализации; защиты; охраны прав и свобод личности. Кроме того, основные права свободы человека и гражданина закреплены на конституционном уровне как непосредственно действующие, что придает им высшую юридическую силу в отношении правотворческой, правоисполнительной, правоохранительной деятельности всех государственных органов и должностных лиц. Вопрос о пределах реализации прав и свобод личностью, по нашему мнению, следует рассматривать с позиции конкретизации и детализации пределов конституционных прав и свобод. Реализация прав и свобод невозможна без их охраны, нет такого права, которое не нуждалось бы в охране. Под охраной прав и свобод следует понимать состояние правомерной реализации прав и свобод под контролем государственных органов, общественных организаций, должностных лиц, но без их вмешательства. Меры же защиты прав и свобод действуют в условиях, когда реализация прав и свобод затруднена, но права и свободы еще не нарушены. Одним из определяющих критериев различия «защиты» и «охраны» является форма деятельности соответствующих субъектов, участвующих в обеспечении прав и свобод. Во многом гарантии реализации прав и свобод обеспечиваются возможностями гарантий охраны и защиты. Таким образом, можно сделать вывод, что существование правового государства является само по себе юридической гарантией в широком смысле, так как именно в таком государстве «обеспечивается подлинное торжество права и закона, незыблемость прав и свобод граждан». Именно правовое государство имеет своей целью наиболее полное обеспечение прав и свобод человека и гражданина.

Ключевые слова: юридические гарантии, функции юридических гарантий, реализация прав и свобод человека, гарантии защиты прав и свобод граждан, гарантии охраны прав и свобод личности.

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