

## Impact Factor:

ISRA (India) = 6.317  
ISI (Dubai, UAE) = 1.582  
GIF (Australia) = 0.564  
JIF = 1.500

SIS (USA) = 0.912  
PIHII (Russia) = 3.939  
ESJI (KZ) = 8.771  
SJIF (Morocco) = 7.184

ICV (Poland) = 6.630  
PIF (India) = 1.940  
IBI (India) = 4.260  
OAJI (USA) = 0.350

SOI: [1.1/TAS](#) DOI: [10.15863/TAS](#)

### International Scientific Journal Theoretical & Applied Science

p-ISSN: 2308-4944 (print) e-ISSN: 2409-0085 (online)

Year: 2023 Issue: 04 Volume: 120

Published: 21.04.2023 <http://T-Science.org>

Issue

Article



**Ainura Kalilovna Orozbayeva**  
Osh State Institute  
Candidate of juridical Sciences,  
Associate Professor,  
Kyrgyz Republic, Osh

## THE CONCEPT AND STRUCTURE OF THE STATE MECHANISM FOR GUARANTEING THE PROTECTION OF HUMAN RIGHTS

**Abstract:** *To date, the state has come a long way towards the institutionalization of human rights. The current situation in this area is characterized by a combination of relatively complete and consistent normative consolidation of fundamental rights and human freedoms with a clearly unsatisfactory state of their practical implementation, expressed in the impossibility for a significant part of the population to fully enjoy their rights, in their systematic violations and the lack of reliable mechanisms for their restoration and protection. All this allows us to conclude that under the current conditions, the center of doctrinal and political efforts should move from the formal recognition of human rights and freedoms to the problem of their real guarantee and protection of human rights and freedoms. In the system of guarantees of human rights, which includes diverse instruments of a socio-economic, cultural, ideological and other nature, state guarantees traditionally occupy a significant place.*

**Key words:** *person, protection, rights, state, Constitution.*

**Language:** *English*

**Citation:** Orozbayeva, A. K. (2023). The concept and structure of the state mechanism for guaranteing the protection of human rights. *ISJ Theoretical & Applied Science*, 04 (120), 232-235.

**Soi:** <http://s-o-i.org/1.1/TAS-04-120-43> **Doi:**  <https://dx.doi.org/10.15863/TAS.2023.04.120.43>

**Scopus ASCC:** 3308.

### Introduction

Many scientists who study the mechanism of protection of rights and freedoms reveal only its structure, i.e. the internal structure of the system, without analyzing the process of carrying out such activities, the action itself in this case is only implied.

The constitutional mechanism for the protection of rights and freedoms is a certain system of bodies, means enshrined in the Constitution, providing the most complete and effective protection of the rights and freedoms of a person and a citizen. In his opinion, the constitutional mechanism consists of two elements: a system of state bodies, with the help of which everyone can protect their rights and freedoms, and remedies (judicial, administrative, civil law, criminal law and others).

B.L. Zheleznov in the mechanism of state protection of the rights and freedoms of man and citizen highlights [1]:

- relevant norms of constitutional, administrative, criminal, civil, labor, family,

environmental and other branches of law. At the same time, the norms of other branches of law, firstly, follow from the norms of constitutional law, and secondly, the norms of constitutional law themselves, which fix the status of a person and citizen, are implemented through the norms of other legal branches;

- public relations regulated by the norms of law in the sphere of state protection of rights and freedoms. These relations exist in almost all spheres of society. They develop between the individual, public associations, national and other social structures, on the one hand, and the state, on the other;

- guarantees of human and civil rights [2].

A.S. Mordovets proposes to distinguish between the mechanism for ensuring the rights and freedoms of a person and a citizen in a broad and narrow professional interpretation. The named mechanism in a broad sense should be presented in the form of four main blocks [3].

## Impact Factor:

**ISRA (India) = 6.317**  
**ISI (Dubai, UAE) = 1.582**  
**GIF (Australia) = 0.564**  
**JIF = 1.500**

**SIS (USA) = 0.912**  
**PIIHQ (Russia) = 3.939**  
**ESJI (KZ) = 8.771**  
**SJIF (Morocco) = 7.184**

**ICV (Poland) = 6.630**  
**PIF (India) = 1.940**  
**IBI (India) = 4.260**  
**OAJI (USA) = 0.350**

The first block is basic, its core is a person as the highest value of democracy.

The second block is the principles of human rights: humanism, justice, equality, freedom, personal integrity, direct effect of the Constitution and others.

The third block is social institutions and normative establishments through which life-affirming values and principles of human rights are directly substantiated, consolidated and implemented.

The fourth block - procedural and control organizational and procedurally streamlines relations in the field of human rights, creates the most favorable conditions for the realization of citizens' rights and freedoms, strengthening the rule of law, public and personal security.

In a narrow professional interpretation, the mechanism for the protection and protection of rights and freedoms can be understood as guarantees [4].

It can be assumed that the concept of a mechanism for protecting the rights and freedoms of a person and a citizen can be considered in a broad and narrow sense.

In a broad sense, this mechanism should consist of the following elements:

- legal norms that established the rights and freedoms of man and citizen;
- legal facts that are the basis for the emergence, change or termination of legal relations. Such legal facts, for the most part, should be illegal actions - torts, namely violations of established rights and freedoms;
- legal relations - "acting as a means of translating the general patterns of behavior laid down in the rules of law into specific and individualized acts of behavior of members of society (subjects of law)" [5];
- activities of subjects of human rights activities, including public authorities within the established powers, non-governmental organizations and the most authorized person to protect their rights and freedoms;
- the use by these persons of certain methods of protection, namely, certain means (methods) of protecting violated rights and freedoms;
- social, including legal responsibility, to which persons who have violated the rights and freedoms of man and citizen are brought.

The mechanism for protecting the rights and freedoms of a person and a citizen in the narrow sense is a set of applied guarantees for the protection of violated rights and freedoms of a person and a citizen.

The category of guarantees of the rights and freedoms of a person and a citizen is a complex concept, consisting of subjects of human rights activities, as well as forms and methods of protection, where forms are the conditions provided by law for the protection of violated rights, and methods are the means and methods of influence by which any the subject of human rights activities can protect

fundamental rights and freedoms. Moreover, each form of protection must correspond to a certain method or means of protection, i.e. method of protecting the violated right. This means that the subjects of human rights activities and forms of protection occupy the main, dominant position, and the methods of protection occupy a secondary, subordinate position.

The direct effect of the mechanism of protection of rights and freedoms is as follows: the subject of human rights activities, being in certain legal conditions (a form of protection), uses one or another established means or method of protection (method of protection).

Four levels of protection of rights and freedoms should be distinguished [6], and therefore four types of guarantees, where the territory of their application serves as a criterion for delimitation, these are:

- international guarantees;
- intrastate (national) guarantees;
- regional guarantees of the rights and freedoms of man and citizen, ensuring the realization of rights and freedoms on the territory of a particular region.

Regional and local guarantees are the closest to a person; first of all, citizens should turn to them in case of violation of their rights and freedoms. As practice shows, people are not inclined to choose these types of guarantees, due to lack of information, ignorance of their capabilities and very often a negative attitude towards regional and local authorities. Therefore, they increasingly choose national and, recently, even international guarantees for the protection of violated rights and freedoms.

Each type of guarantee corresponds to a certain mechanism for the protection of rights and freedoms, namely: international, national, regional and local.

The international mechanism for the protection of human rights operates both at the level of the world community (global level) and at another multilateral level (CIS, the European Union, the African Union, etc.). The national protection mechanism includes the protection of rights and freedoms within a particular state. The local mechanism for protecting the rights and freedoms of a person and a citizen can be carried out at the municipal level.

Between these mechanisms there is a certain relationship and subordination. The local mechanism for the protection of rights and freedoms must comply with the regional standard of rights and freedoms.

The national mechanism for the protection of the rights and freedoms of a person and a citizen must comply with the international standard of human rights, established primarily in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

## Impact Factor:

ISRA (India) = 6.317  
ISI (Dubai, UAE) = 1.582  
GIF (Australia) = 0.564  
JIF = 1.500

SIS (USA) = 0.912  
ПИИИ (Russia) = 3.939  
ESJI (KZ) = 8.771  
SJIF (Morocco) = 7.184

ICV (Poland) = 6.630  
PIF (India) = 1.940  
IBI (India) = 4.260  
OAJI (USA) = 0.350

Compliance of the national mechanism for the protection of the rights and freedoms of a person and a citizen with the international standard of human rights follows from those obligations, fixing the principle of priority of generally recognized principles and norms of international law in paragraph 3 of article 6 of the Constitution of the Kyrgyz Republic [7].

The same principle of compliance of the mechanism for protecting the rights and freedoms of a person and a citizen in the Kyrgyz Republic with the standard of rights and freedoms established by the state.

Thus, the mechanism for protecting the rights and freedoms of a person and a citizen should be understood as a system of certain means and methods of protection, with the help of which the subjects of human rights activities protect violated rights and freedoms, being in a certain life situation.

Lawyers understand the function of protecting human rights in the constitutional aspect in different ways. For example, S. S. Alekseev wrote that “the protection of the right is a state-enforcement activity aimed at restoring a violated right, ensuring the fulfillment of a legal obligation” [8].

O. E. Leist believed that this concept, if preventive measures are excluded from it, is essentially identical to the right to restorative sanctions [9].

A. N. Golovistikova notes that the protective function of the state is in demand due to the need to further strengthen the system for protecting human rights and freedoms, which is constituted as a priority duty of the state.

The Kyrgyz Republic guarantees every person protection from arbitrary or unlawful interference in his personal and family life (Article 36), from encroachment on his honor and dignity (Article 30), from violation of the secrecy of correspondence and telephone conversations (Article 29) [10].

Thus, in the constitutional legislation we are talking about the personal freedom and private life of citizens.

However, these constitutional formulas do not receive a comprehensive and deep understanding, and even more so - subsequent provision.

The Constitution of the Kyrgyz Republic, reflecting the mechanism of constitutional protection of the individual in the Kyrgyz Republic, should be based on such principles as:

- belonging to a person of fundamental rights and freedoms from birth and their inalienability ;
- recognition of human rights and freedoms as valid;
- legal equality (equality) of citizens, including the equality of all before the law and the courts, equal rights and freedoms for men and women, equality regardless of origin, gender, race, nationality, language,
- religion, political and religious beliefs, conditions and circumstances of a personal or social nature;
- exercise of the rights and freedoms of man and citizen, which does not violate the rights and freedoms of other persons, the interests of society and the state;
- individual freedom;
- compliance of the personality status with internationally recognized principles and standards;
- guarantee of the constitutional status of the individual, his rights and freedoms.

In our opinion, in Kyrgyzstan more attention should be paid to resolving issues of the rights and freedoms of citizens, and if disagreements and contradictions arise, try to reach a consensus.

In modern society, caring for the disadvantaged, for those who are unable to protect themselves, is an integral function of the state. Protection of the rights and freedoms of citizens belonging to socially vulnerable groups should become one of the priorities of the policy of the Kyrgyz Republic in the field of human rights.

## References:

1. Zheleznov, B.L. (2010). *The mechanism of state protection of fundamental rights and freedoms*. Uchenye zapiski. T. 138. Legal sciences. (p.28). Kazan: Publishing House of Kazan University.
2. Zheleznov, B.L. (2010). *The mechanism of state protection of fundamental rights and freedoms*. Uchenye zapiski. T. 138. Legal sciences. (p.24). Kazan: Publishing House of Kazan University.
3. Mordovets, A.S. (2010). *General theory of state and law*. Academic course: In 2 volumes / Resp. ed. prof. M.N. Marchenko. Volume 1: Theory of the state. (p.282). Moscow: Zertsalo.
4. Mordovets, A.S. (2010). *General theory of state and law*. Academic course: In 2 volumes / Resp. ed. prof. M.N. Marchenko. Volume 1: Theory of the state. (p.282). Moscow: Zertsalo.

<b>Impact Factor:</b>	<b>ISRA (India) = 6.317</b>	<b>SIS (USA) = 0.912</b>	<b>ICV (Poland) = 6.630</b>
	<b>ISI (Dubai, UAE) = 1.582</b>	<b>ПИИИ (Russia) = 3.939</b>	<b>PIF (India) = 1.940</b>
	<b>GIF (Australia) = 0.564</b>	<b>ESJI (KZ) = 8.771</b>	<b>IBI (India) = 4.260</b>
	<b>JIF = 1.500</b>	<b>SJIF (Morocco) = 7.184</b>	<b>OAJI (USA) = 0.350</b>

---

5. (2005). *Theory of State and Law: A Textbook for High Schools* / Ed. ed. d. y. n. , prof. V.D. Passes. 3rd ed., revised. and additional. (p.158). Moscow: Norma.
6. Anokhin, Yu. V. (2007). *The mechanism of state-legal support of the rights and freedoms of the individual* (based on the materials of the Russian Federation): dis. . . Dr. jurid. Sciences. (p.465). Saratov.
7. (2010). *Constitution (Basic Law) of the Kyrgyz Republic dated June 27, 2010 Adopted by referendum (popular vote) on June 27, 2010* (Enacted by the Law of the Kyrgyz Republic of June 27, 2010).
8. Alekseev, S. S. (1994). *State and Law. Initial course.* (p.73). Moscow.
9. Leist, O. E. (1962). *Sanctions and responsibility under Soviet law.* (p.113). Moscow.
10. Golovistikova, A. N., & Grudtsyna, L. Yu. (2008). *Human rights: textbook.* (p.282). Moscow.