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Issue Article

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EVOLUTION OF CONCEPTS ABOUT STATE GUARANTEES FOR THE PROTECTION OF HUMAN RIGHTS

Abstract: *The concept of state guarantees is an essential component of the general doctrine of human rights. Although initially human rights arise rather in a declarative form, reflecting the idea of the inalienable and natural freedom of a person, a real need to introduce the concept of a mechanism for the practical implementation of these rights appears relatively early. 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.*

Key words: *guarantees, concepts, rights, people, protection, legislation, protection.*

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Introduction

The concept of guarantees has been used for a long time in the philosophical and legal literature on human rights. It is found, for example, in J. Locke [1], who writes about the purpose of electing legislative bodies: "so that laws are issued and rules are established as a guarantee and protection of the property of all members of society, so that power is limited and the dominance of each part and each member of society is moderated." However, the concept of a guarantee is not disclosed to them.

According to L. Dyugi [2], it is the presence of guarantees that is the main sign of the rights of a citizen. He points out that, according to the initial ideas of the creators of the Declaration of the Rights of Man and the Citizen in France, the rights of a citizen in their content are no different from human rights: these are the same rights that have received protection and guarantee. Another name for them is civil rights; "these are the natural rights of the individual, inasmuch as they are recognized and guaranteed by the state [3]. "

The formation of the institution of state guarantees, if not simultaneously, then practically in parallel with the constitution of human rights themselves, can be explained primarily by the fact that the creation of a legal regime for the use of these rights inevitably implies the need to protect them in case of violation.

Thus, any more or less consistent policy of the state in the field of human rights, not limited to their purely ideological recognition, certainly requires the development and implementation of appropriate guarantees. Otherwise, human rights cannot be fully implemented in social practice and lose their value.

At the end of the 19th century, the concept of “guarantees” began to be quite actively used in legal literature, primarily on issues of state law. At the same time, as a rule, the use of this concept in a particular context is not accompanied by disclosure of its exact content, classification of guarantees, etc.

So, much is said about the guarantees of the rights of citizens in the work of B. N. Chicherin [4] “The Course of State Science”. The author calls an

impartial and independent court the main guarantee of personal rights against the arbitrariness of the authorities. Among other guarantees of rights, he mentions such as: habeas corpus (guarantee against illegal arrests); participation of taxpayers or their representatives in the establishment of taxes; jury trial; the right to file complaints; administrative justice, etc. At the same time, the author's conclusions are mainly based on the experience of Western European states. B. N. Chicherin does not give a definition of the concept of "guarantee" or a classification of guarantees [5].

Similarly, he understands the guarantees of rights and such a prominent legal scholar as S. A. Kotlyarevsky [6]. Apparently, he proceeds from the fact that the very constitutional consolidation of certain rights can already be considered their guarantee. As examples of specific guarantees, he names responsibility before a jury, secret ballot, political responsibility of the executive power to people's representatives, etc. However, like B.N. Kotlyarevsky does not formulate.

The issue of guarantees was quite often considered by pre-revolutionary scholars in the analysis of any individual legal problems. So, V. M. Gessen [7], exploring the issue of personal inviolability, saw its guarantees in the institution of a "court order", the organization of judicial control, in the supervision of places of detention, etc. P. I. Lyublinsky studied judicial guarantees of individual rights, referring to them , in particular, the publicity of the court, independent advocacy, the right to appeal, the responsibility of officials, etc. Quite valuable provisions on guarantees of rights are contained in the article by a specialist in international law L. V. Shalland "The Supreme Court and Constitutional Guarantees" [8]. Unlike most other authors, L. V. Shalland gives a general definition of constitutional guarantees: "measures aimed at protecting a constitutional act from any encroachment on it, no matter who they come from." From his point of view, such guarantees are directed primarily against the illegal actions of the authorities: "The purpose of these measures is to paralyze those actions of the authorities that, going beyond the limits established by the fundamental law, are unconstitutional and, as such, violate someone's rights".

Schalland also draws attention to the fact that any constitutional guarantees can only be effective if the constitutional order itself is recognized and approved by citizens. Under normal conditions, he believes, these guarantees serve as a useful tool, on the one hand, to protect the rule of law from violations by certain bodies or individuals, and on the other hand, to prevent inadvertent distortions of the constitution in its application. As specific constitutional guarantees, the author considers such as the oath, the constitutional responsibility of ministers, the conditions for legislative initiative, the judicial review of the constitutionality of laws [9].

A certain uncertainty also remains in relation to the understanding of the nature and classificatory affiliation of the so-called organizational guarantees. Some authors, while generally recognizing the importance of organizational activity in ensuring the rights of the individual, nevertheless believe that, from the point of view of a general classification, there are simply no grounds for singling out organizational ones along with general and legal guarantees.

So, according to L. N. Fedorova, "the allocation of organizational guarantees as an independent type is unreasonable, since the activities of the state of an organizational nature, firstly, are implemented through the functions of state bodies, and secondly, receive regulatory formalization (in the form of status, competence) in the law [10].

Therefore, this kind of activity can be considered as a subspecies of legal guarantees - as organizational and legal guarantees.

The main disadvantage of the above approach, in our opinion, is the leveling of the specifics of organizational activity as a specific form of implementation of the functions of the state.

Meanwhile, in the theory of state and law, it is recognized that the state performs its functions in two main forms - legal and organizational. The legal forms of the implementation of the functions of the state are understood as homogeneous in their external features (nature and legal consequences) the activities of state bodies associated with the publication of legal acts.

We are talking about law-making, law interpretation, law enforcement (in the form of operational and executive and law enforcement activities) and other types of legally significant activities of the state. Organizational forms traditionally include the activities of state bodies that do not entail legal consequences (organizational-regulatory, organizational-ideological, etc.).

The specificity of organizational activity from the point of view of the legal criterion is that, although the latter is carried out on the basis of the requirements of legality and is somehow connected with the competence of a state body, it nevertheless does not give rise to legal consequences in the form of publication, application and other legal acts.

M. I. Baitin, in this regard, reasonably noted that "legal forms are always organizational. However, not all organizational forms are legal. A differentiated approach to the forms of state activity has also become established in the science of public administration, where, along with legal and organizational, organizational and legal forms are also distinguished [11].

So, according to G. V. Atamanchuk, we can talk about two forms of state-administrative activity: legal, through which managerial decisions and actions that have legal meaning are fixed (establishment and

application of legal norms); and organizational, related to the implementation of certain collective or individual actions (operational-organizational and logistical operations) [12].

Along with this, the researcher believes, a special place is occupied by organizational and legal forms, stating the fact that in state bodies many legal forms are legally correct only if they are adopted through established organizational forms.

In particular, strict organizational procedures operate in the adoption of legal acts by representative bodies of power, in the activities of collegial executive bodies, in the administration of justice, etc. Ignoring such procedures makes the relevant legal acts null and void.

At the same time, attention is drawn to the fact that organizational and legal forms must be approached in a differentiated and specific way, since "there are no forms applicable to any case, each form contains only its inherent potential for solving a specific managerial problem".

In view of the foregoing, the point of view of those authors who propose to consider organizational guarantees as an independent type, different from both general and legal guarantees, seems more convincing. However, within the framework of this approach, there are known discrepancies in understanding the nature and significance of organizational guarantees. Some researchers assign them an auxiliary role, associating them with means of organizational-technical, organizational-ideological and similar quality.

In particular, according to I. V. Rostovshchikov, organizational guarantees "should be understood as special organizational, technical, informational and similar activities of competent entities aimed at facilitating the process of realizing rights and freedoms, the effective functioning of their general social and special guarantees [13].

This refers to the improvement of the work of the entire state apparatus, the effective use by the authorities of the economic potential, institutions of democracy, social forecasting, etc. [14].

The organizational kind of activity, although generally based on the law, as a rule, is not bound by rigid, detailed normative regulation, is not directly carried out through law-making, law enforcement , but "penetrates them".

As specific varieties of these guarantees, the author calls information support for citizens (about the events of public life, the movement of vehicles, weather, time, etc.), assistance in exercising certain rights (employment, housing exchange, issuance of certificates, etc.), introduction of technical means (improvement of the communication system, computerization of education, installation of alarms in apartments, etc.), maintenance of order in public places, proper sanitary condition, etc.

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