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# КОНСТИТУЦИЈАЛЫҚ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL AND INTERNATIONAL LAW

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## The concept and classification of legal guarantees

The article deals with the concept and classification of legal guarantees. The concept of guarantees as social and legal measures comprehensively show the level of development of the state, the democratic character of society, the public and legal consciousness of the population. Guarantees bind together the legal and factual position of a person in civil society, they serve as an expression of social freedom, responsibility and activity of citizens. In a broader sense, the concept of guarantees the rights and freedoms of a person and a citizen is a component of, on the one hand, the legal status of the individual, on the other, a more capacious concept of «constitutional guarantees», which means a set of legal norms and institutions that protect the constitutional principles, human rights, the foundations of the constitutional system, the fulfillment of constitutional duties and the functioning of various public authorities. Thus, it can be concluded that guarantees of human and citizen's rights and freedoms are a combination of constitutional and legal norms, institutions, means, methods, mechanisms and procedures that ensure the implementation, protection and protection of constitutional rights and freedoms of a person and citizen. In addition, it is fair to say that political, economic, spiritual prerequisites and conditions do not in themselves serve as a basis for realization of individual rights and freedoms. It should be noted that they become guarantees only through the legal form and organizational efforts of the state and society. Hence the allocation of guarantees of human and citizen's rights from the standpoint of a system that includes guarantees of general and legal. The article considers in detail the types of guarantees that have their content and forms of expression.

*Keywords:* the concept of guarantee, legal guarantees, domestic guarantees, the classification of legal guarantees, legal guarantees of the legal status of the individual.

Observance of public recognition rights and freedoms is the duty of the state. For this, the state develops and creates relevant guarantees and establishes the legal mechanisms for their implementation [1; 254].

The guarantee (from the French *garantie*) is a warranty, errand, a security, a condition providing for anything. The guarantees of the rights and freedoms of a person and a citizen are part of the legal status of the individual, on the one hand, and on the other hand, of a more capacious concept of «constitutional guarantees», which means a set of legal norms and institutions that protect the constitutional principles, human rights, the foundations of the constitutional system, the fulfillment of constitutional duties and the functioning of various public authorities. Thus, guarantees of human and citizen's rights and freedoms are a set of constitutional legal norms, institutions, means, methods, mechanisms and procedures that ensure the realization, protection and protection of constitutional rights and freedoms of a person and citizen [2; 14].

Guarantees are a system of socioeconomic, political, moral, legal, organizational prerequisites, conditions, means and methods that create equal opportunities for the individual to exercise his rights, freedoms and interests. Guarantees as social and legal measures comprehensively show the level of development of the state, the democratic character of society, public and legal consciousness of the population. Guarantees bind together the legal and factual position of a person in civil society, they serve as an expression of social freedom, responsibility and activity of citizens.

There are much attention is paid to the classification of guarantees of individual rights in the legal literature. It is true that political, economic, spiritual prerequisites and conditions in themselves do not serve as a basis for realizing the rights and freedoms of the individual. Actually, they become guarantees only through the legal form and organizational efforts of the state and society. Hence the allocation of guarantees for human and citizen's rights from the position of a system that includes general and legal guarantees. In turn, these types of guarantees have their content and forms of expression.

Thus, general guarantees are divided according to social orientation into material, political and spiritual.

Material guarantees are the unity of the economic space, the free movement of goods, services and financial resources, the support of competition, the freedom of economic activity, the recognition and protection of private, state, municipal and other forms of ownership, and the social partnership between a person and the state, an employee and an employer, producer and consumer.

Political guarantees are system of people's power, the ability of the individual to take part in managing the affairs of the state and society. The Russian Federation recognizes and guarantees local self-government, political diversity, the right of the people of Russia to preserve and develop their native language, as well as opportunities to enjoy human rights and fundamental freedoms, and to protect their interests.

Spiritual guarantees are system of cultural values based on love and respect for the Fatherland, faith in good and justice; this is the public consciousness and education of man. Among the spiritual guarantees are: ideological diversity, prohibitions on the monopolization of ideology, incitement of social, racial, national and religious discord, universal access to and free basic general and secondary vocational education, freedom of creativity.

Legal guarantees are system of means and ways of protecting and protecting human rights and citizenship.

First of all, it is the responsibility of the state to provide the individual with the right to judicial protection, the right to receive qualified legal assistance, access to justice and compensation for the damage caused [3; 623].

Guarantees of individual rights are defined as general conditions and special (legal) means that provide an actual opportunity to use the underlying benefits and protect them reliably. With reference to the constitutional status of a person under safeguards, one should understand the conditions and means that actually provide a person and citizen with the opportunity to enjoy basic rights and freedoms and strictly fulfill their duties. In its essence, the guarantee is a system of conditions that ensure the satisfaction of the needs and interests of man. Their main function is the fulfillment of obligations by the state and other entities in the sphere of realizing the fundamental rights of the individual. The object of guarantees are public relations related to the implementation, protection and protection of basic human rights.

Legal guarantees are characterized by a number of features: 1) they find their preferential expression in the rules of law; 2) represent specially designed legal means of real provision of legally protected interest; 3) are conditioned by political and economic peculiarities of the state; 4) in content they represent a combination of legal norms and procedural actions based on them, entrusted with certain powers and legal responsibilities.

Depending on the criterion underlying the classification of guarantees, there are several types of constructing a system of legal guarantees for the basic rights and freedoms of citizens, but as the leading criterion for such classification, it seems most expedient to divide them according to a functional feature. This criterion adequately reflects the most significant properties of guarantees of fundamental rights and freedoms.

The application of a functional criterion for classifying legal guarantees of fundamental rights and freedoms of citizens allows us to isolate two types of guarantees - guarantees of implementation and guarantees of protection (protection).

The analysis of literature available in the literature made it possible to formulate the notion of protection guarantees. Guarantees for the protection of individual rights are the means provided for in law to allow individuals, firstly, independently or with the assistance of law enforcement agencies to restore or intercept a violated right by means not prohibited by law, and secondly, the existence of a system and a special procedure of justice - a system of state bodies, carrying out an objective resolution of disputable situations and determining the degree of guilt of the perpetrators of the offense and making a decision on the measures of legal responsibility, and, thirdly, digits together with the individual's right to seek protection of the right violated international human rights organizations.

Legal guarantees of protection are only relevant when they can really ensure the operation of the mechanism for the protection of human rights and freedoms (that is, they do not remain de jure declared in the law, for example), but actually implement the required interaction between the established competence of the

subject to exercise his right and the mechanism its implementation. In this connection, an important condition for this interaction is the real provision of strict execution of the assigned corresponding responsibilities to the relevant state bodies, municipal bodies and their officials, as well as to other persons [4; 53].

The term «protection» should be used when it comes to the application by the competent authorities of the state, local authorities, or a person whose rights are violated, in the manner prescribed by law, measures to restore violated rights and legitimate interests.

Guarantees of protection of constitutional rights are specific, which is dictated by their universality, since their implementation is a necessary prerequisite for the implementation of all other subjective rights of citizens. The specificity of the norms of constitutional law is that all of them, regardless of the degree of abstractness, are norms of direct action. Their purpose is to ensure the prescriptions of sectoral norms regulating the scope of these personal rights of citizens. In essence, they are general guidelines that indicate to the state, its bodies, public organizations and citizens a certain version of the behavior aimed at ensuring conditions for the unhindered enjoyment of fundamental rights and freedoms.

Legal guarantees (funds) - the totality of the funds fixed in the legislation, as well as organizational and legal activities for their application, aimed at ensuring lawfulness, for the unimpeded exercise and protection of rights and freedoms. This is, first of all, the legally-mediated activity of special law enforcement and justice bodies. The following legal guarantees are distinguished: 1) means for detecting (detecting) offenses. These guarantees are related to the work of the competent authorities aimed at detecting offenses with a view to their suppression and elimination of consequences; 2) means of preventing offenses. These are legal means, which allow to prevent possible offenses; 3) measures of restraint of offenses are used in those cases when it is necessary to forcibly stop illegal actions; 4) measures to protect and restore violated rights, to eliminate the consequences of offenses; 5) legal responsibility is also the most important and necessary means of ensuring legality, and its effectiveness is determined not by cruelty, but by the inevitability of punishment; 6) a special role is assigned to procedural guarantees among legal guarantees. The process is a form of the life of the law, therefore the formal rights and freedoms can only be obtained by having procedural support, a clear order of realization. 7) Finally, an important guarantee of the rule of law is justice - the activities of the courts, carried out through the consideration of civil and criminal cases in order to strengthen the rule of law in every way. 8) In addition to legal means, special guarantees also include organizational means. These include various activities of an organizational nature specifically aimed at improving the activities to ensure the rule of law [5; 122].

Legal guarantees of the legal status of the individual. Human rights and citizenship, according to many domestic and foreign legal scholars, often do not have the necessary protection mechanism. Many constitutional provisions can not be objectively implemented in full, as they are not provided with legal guarantees. At the same time, «legal protection is one of the main goals of state activity, a condition for the exercise of freedom and human rights, a guarantor, its legal protection», forces «the power to give legal status to a person of legal significance». In this connection, the issue of legal guarantees for ensuring the legal status of a person acquires special significance.

Legal guarantees for ensuring the legal status of an individual are the conditions provided by law, with the availability of which the legislator connects the real possibility and maximum effectiveness of the exercise of rights, freedoms and duties in the complex of legal status components.

The modern system of legal guarantees of a person's legal status is divided into three levels:

- 1) international;
- 2) regional;
- 3) national.

International level of guarantees of legal status. One of the characteristic features of the rule of law is the priority of international law over domestic law. The formation of such mechanisms and guarantees is primarily connected with the United Nations, the Charter of the United Nations and the Universal Declaration of Human Rights (10 December 1948) [6].

The international human rights law is based on two international pacts on civil and political and social, economic and cultural rights. In addition, a sufficiently effective mechanism for the protection of human rights within the UN is developed, which is a system of special bodies, including the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat. In addition, there are many so-called non-governmental international organizations set up to protect human rights and freedoms («Amnesty International», «Médecins Sans Frontières», «International Red Cross», etc.).

At the regional level, it is possible to single out, first of all, the American, African and European systems of guarantees of the legal status of the individual. At the same time, the system functioning in Europe can be considered a kind of standard. It was formed within the framework of the Council of Europe, the oldest regional organization. The two most important bodies of the Council of Europe are: the Committee of Ministers, which includes the Ministers for Foreign Affairs of the Member States and the Parliamentary Assembly representing the national parliaments.

The main forms of norm-setting activities of the Council of Europe are the creation of conventions and agreements, the most important of which are the European Convention on Human Rights and the European Social Charter. The first of them was adopted on November 4, 1950 in Rome by 15 members of the Committee of Ministers of the Council of Europe and entered into force on September 3, 1953. This document was the first international treaty at the regional level that transformed the principles proclaimed by the Universal Declaration of Human Rights of 1948 in specific legal obligations.

On the basis of this Convention, two bodies were established - the European Commission on Human Rights and the European Court of Human Rights, which are empowered to deal with complaints from both States and individuals.

National (internal) level of guarantees of the legal status of the individual. In recent years, many countries have become parties to the main human rights treaties, which entail legal obligations for their implementation at the international level. The practical task of guaranteeing, protecting and promoting human rights is a task, primarily national, and each state must bear responsibility for its solution. At the national level, the protection of rights can best be ensured through appropriate legislation, an independent judiciary, and the creation of democratic legal institutions [7; 13].

In accordance with this domestic guarantees are divided into: judicial and non-judicial.

In addition, domestic legal guarantees of a person's legal status can also be divided into two large groups:

- 1) guarantees of the realization of the legal status of the individual;
- 2) guarantees of protection of a person's legal status.

The first group of guarantees includes:

- normative consolidation of fundamental rights, freedoms and duties in the current legislation and, first of all, in the Constitution of the state;
- providing a person with the opportunity to realize legitimate interests by his lawful actions;
- stimulation (from the state side) of certain activities and, thus, encouraging people to engage in this activity (lending to education, housing construction, establishing benefits for servicemen, etc.);
- state care for the socially unprotected strata of the population (pensions, government programs to support maternity and childhood, etc.).

The second group of legal guarantees are:

- personal guarantees that entitle the individual to defend their legitimate interests independently by all means not prohibited by law;
- guarantees in the law enforcement sphere, presupposing the creation of state bodies that protect human and civil rights and freedoms on a professional basis (police, prosecutor's office, institution of the Ombudsman for Human Rights, etc.);
- guarantees in the field of justice that presuppose the formation and functioning of state bodies (courts), carrying out on behalf of the state an objective resolution of disputes, as well as determining the degree of culpability of persons accused of committing offenses, and deciding on the measures of legal responsibility with respect to these persons.

Recall that legal guarantees in the legal literature are understood to mean various legal means, ways and mechanisms that help to ensure the exercise of rights, legitimate interests and duties of subjects of law, the maintenance of a certain legal status, the order of public relations. Even from this definition it can be seen that there are many such means, methods and mechanisms that are closely interrelated, which, firstly, necessitates their certain systematization and, secondly, consideration of all these legal guarantees as a system [8; 35].

The analysis of the entire system of legal guarantees and, above all, the rights and legitimate interests of subjects of educational relations in general and pedagogical workers, in particular, does not lead to the objectives of this manual. We confine ourselves to a few general remarks and to the allocation of the most important groups of such guarantees.

First of all, we note that all guarantees are, in effect, legal prescriptions (general obligations and / or general prohibitions) addressed to the state, its authorized bodies, municipal authorities, educational institutions and their governing bodies. In other words, guarantees of the rights and legitimate interests of pedagogical workers are realized through the implementation of the relevant regulatory and legal obligations (compliance with prohibitions) of the said subjects of educational relations. These duties and prohibitions can be formulated in different ways, but their essence as guarantees is unchanged.

Depending on various criteria, we can distinguish the following groups of legal guarantees.

1. Depending on the ownership of the legal norms in which such guarantees are enshrined, two main groups of guarantees are allocated to international or domestic (national) law: international legal guarantees and guarantees enshrined in national legislation. The material of the subsequent sections of this chapter is devoted to their characterization.

2. In accordance with the branches of legislation, it is possible to single out constitutional, administrative-legal, civil-law, criminal-legal guarantees, guarantees provided for by labor, arbitration, educational, financial, arbitration law and other branches. In addition, it is of great importance to allocate material and procedural guarantees, which is especially important for judicial practice.

3. Depending on the legal nature of legal guarantees, there are:

a) normative guarantees, i.e. fixed in the regulatory legal acts of different legal force (laws and by-laws, local regulations);

b) law enforcement guarantees, i.e. guarantees contained in decisions of law enforcement agencies in the implementation of various types of law enforcement and justice (judicial, investigative, administrative, arbitration).

4. Depending on the specifics of bodies that manage education at various levels and with various elements of the educational system and operate on the basis of legislation and in accordance with it, it is possible to distinguish the guarantees provided by:

a) bodies of legislative power and bodies of local self-government implementing educational standard-setting;

b) bodies of executive power;

c) education authorities;

d) educational institutions and bodies of its administration (trustees' councils, scientists and pedagogical councils);

e) professional and human rights organizations of educators;

f) public organizations established and operating in the field of education (associations of teachers and university professors, parental councils (committees), etc.).

5. Based on the kind of rights, freedoms and legitimate interests that are subject to legal guarantees, such guarantees are given to education workers as guarantees for them:

– constitutional rights (the right to honor and dignity, freedom of speech, etc.);

– social rights (pensions, eligibility for benefits, etc.);

– labor rights (the right to rest, the right to work part-time, etc.);

– educational (professional) rights and freedoms (the freedom of the teacher in the choice and use of teaching and educational methods, textbooks, teaching aids and materials, methods of assessing the knowledge of students, etc.).

6. Depending on the degree of coverage of different categories of pedagogical workers, it is possible to single out general guarantees (relating both to all categories of pedagogical workers and other types - subjects of educational relations), and special guarantees for their rights and legal interests relating to certain categories pedagogically the freedom of the teacher in choosing and using: methods of teaching and education, textbooks, teaching aids and materials, methods for assessing the knowledge of students, workers in general education institutions, pedagogical workers (the teaching staff of higher educational institutions, pedagogical workers of special types of educational institutions, etc.).

7. Depending on the nature of the regulatory framework, the guarantees may be mandatory (that is, unconditionally binding) and recommendatory. Examples of the first are guarantees established in legislative acts and therefore are mandatory for all participants of educational relations — from the state to the head of educational institutions. Recommendation guarantees, as a rule, are fixed in international legal acts (for example, in the above-mentioned «ILO / UNESCO Recommendations»).

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

- the main functional purpose of legal guarantees of individual rights and freedoms, as well as other guarantees, is that they are all aimed at the practical feasibility of individual rights and freedoms;
- legal guarantees are, first of all, the means provided by law, directly ensuring the legitimacy of the behavior of subjects of social relations and, accordingly, their own rights and freedoms, i.e. the common property of legal guarantees is their consolidation in the law and other normative acts.

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## Құқықтық кепілдіктің түсінігі мен жіктелуі

Мақалада құқықтық кепілдіктің түсінігі мен жіктелуі туралы мәселе қарастырылған. Кепілдіктер әлеуметтік-құқықтық шаралар ретінде мемлекет дамуының деңгейін, қоғамның демократиялық сипатын, халықтың қоғамдық және құқықтық сана-сезімін жан-жақты көрсетеді. Олар адамның азаматтық қоғамдағы заңды және нақты жағдайын біріктіреді, азаматтардың әлеуметтік бостандығын, жауапкершілігін және қызмет етуін білдіреді. Адамның және азаматтың құқықтары мен бостандықтарының кепілдігі, түсінігі, кең мағынасында, бір жағынан, жеке тұлғаның құқықтық мәртебесінің бір бөлігі болып табылады, екінші жағынан, «конституциялық кепілдіктер» конституциялық қағидаларды, адам құқықтарын, конституциялық құрылыстың негіздерін қорғайтын құқықтық нормалар мен институттардың жиынтығын, көпшілік биліктің конституциялық міндеттерді орындауын және әртүрлі мемлекеттік органдарының жұмыс істеуін білдіреді. Сонымен, адамның және азаматтың құқықтары мен бостандықтарының кепілдіктері — адам мен азаматтың конституциялық құқықтары мен бостандықтарын іске асыруды, сақтауды және қорғауды қамтамасыз ететін конституциялық-құқықтық нормалар, институттар, құралдар, әдістер, механизмдер мен рәсімдердің жиынтығы болып табылады деген қорытынды жасауға болады. Шын мәнінде, саяси, экономикалық, рухани алғышарттар мен шарттар адамның жеке құқықтары мен бостандықтарын іске асыру үшін негіз болып табылмайды. Одан басқа, шын мәнінде, олар мемлекет пен қоғамның құқықтық нысаны мен ұйымдастырушылық күші арқылы ғана кепілдікке айналатынын атап өткен жөн. Демек, адамның және азаматтың құқықтарының кепілдіктерін жалпыға ортақ және құқықтық кепілдіктерді қамтитын жүйе ұстанымынан бөлу. Мақалада аталған кепілдіктердің бұл түрлері толық зерттелген, олардың мазмұны мен білдіру нысандары болатындығы дәлелденген.

*Кілт сөздер:* кепілдіктің түсінігі, құқықтық кепілдіктер, мемлекетішілік кепілдіктер, құқықтық кепілдіктерді жіктеу, жеке тұлғаның құқықтық мәртебесін қамтамасыз ететін құқықтық кепілдіктер.

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## Понятие и классификация юридических гарантий

В статье рассмотрены вопросы понятия и классификации юридических гарантий. Гарантии как социально-правовые меры всесторонне показывают уровень развития государства, демократичности общества, общественного и правового сознания населения. Гарантии связывают воедино и правовое, и фактическое положения человека в гражданском обществе, служат выражением социальной свободы, ответственности и активности граждан. В более широком смысле гарантии прав и свобод человека и гражданина являются составляющей, с одной стороны, правового статуса личности, с другой — более емкого понятия «конституционные гарантии», под которыми следует понимать совокупность правовых норм и институтов, обеспечивающих защиту конституционных принципов, прав человека, основ конституционного строя, выполнения конституционных обязанностей и функционирования различных органов публичной власти. Таким образом, можно заключить, что гарантии прав и свобод человека и гражданина — это совокупность конституционно-правовых норм, институтов, средств, способов, механизмов и процедур, обеспечивающих реализацию, охрану и защиту конституционных прав и свобод человека и гражданина. Кроме того, справедливо утверждение, что политические, экономические, духовные предпосылки и условия сами по себе не служат основанием для реализации прав и свобод личности. Следует отметить, что гарантиями они становятся лишь через юридическую форму и организационные усилия государства и общества. Отсюда и выделение гарантий прав человека и гражданина с позиции системы, включающей в себя гарантии общие и юридические. В статье подробно рассмотрены названные виды гарантий, которые имеют свое содержание и формы выражения.

*Ключевые слова:* понятие гарантии, юридические гарантии, внутригосударственные гарантии, классификация юридических гарантий, юридические гарантии обеспечения правового статуса личности.

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