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Institutional Guarantees of Constitutional Political Rights and Freedoms of Person and Citizen in Ukraine

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Abstract

Based on the generalisation and systematisation of the theory and practice of constitutional law, the study highlights relevant issues of the mechanism for implementing constitutional political rights and freedoms. The purpose of the study is to analyse the mechanism for ensuring the implementation of constitutional political rights and freedoms to determine the role and importance of institutional guarantees in this process. In the course of the research, a set of methods and methodological approaches was used. In particular, formal-legal and structural-functional, systemic and comparative-legal methods, analysis, synthesis, and forecasting became decisive. In a generalised form, institutional guarantees can be defined as a system of national, central, and local bodies and officials, ones of local self-government, and public associations that are authorised to create favourable conditions, resort to effective means and measures to ensure the implementation of constitutional political rights and freedoms of person and citizen. Based on the material presented in the study, it can be argued that institutional guarantees for ensuring constitutional rights and freedoms of person and citizen are considered not as statically available conditions and means of ensuring human and civil rights and freedoms, but as dynamic duties of the state, its bodies and officials to constantly create favourable conditions and provide effective means of their implementation. The dynamics of the development of the legislative framework demonstrates trends in modernising the system of institutional guarantees for ensuring the political rights and freedoms of person and citizen in Ukraine, expanding the system of bodies and organisations authorised to conduct such an honourable mission for the benefit of a person as the highest social value, meeting their needs and interests

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Introduction

The approval and provision of human rights and freedoms is the main duty of the state, as stated in part 2 of Art. 3 of the Constitution of Ukraine. Among the state bodies that should ensure constitutional political rights and freedoms, the Verkhovna Rada of Ukraine, the President of Ukraine, the executive and judicial authorities, and the prosecutor's office of Ukraine occupy a prominent place. The outlined issues are not thoroughly developed in scientific papers.

The problems of ensuring constitutional political rights and freedoms were analysed by the following researchers: G. Andreieva, O. Batanov, A. Budagova, L. Voievodin, B. Ebzieiev, A. Kolodii, V. Kopeychikov, V. Kravchenko, I. Kushnir, O. Kushnirenko, O. Marcelliak, M. Matuzov, A. Mordovets, M. Malein, V. Nesterovych, A. Oliinyk, V. Patiulin, P. Rabinovych, T. Siniukova, T. Slinko, K. Tolkachov, V. Fedorenko, A. Khabibulin, and others.

A series of scientific works by professor A. Oliinyk is devoted to a comprehensive study of the mechanism of ensuring human and civil rights and freedoms in Ukraine. First of all, this refers to the monograph "Constitutional and legal mechanism for ensuring fundamental freedoms of person and citizen in Ukraine" (2008); "Constitutional freedoms of person and citizen and their provision in Ukraine" (2018). In these works, the theoretical and methodological foundations of rights and freedoms, their content, and the general mechanism of ensuring [1] were investigated. Therewith, it is important to note that in recent years, constitutionalist researchers have been actively resorting to examining certain political rights and freedoms of person and citizen, the specific features of their regulation and implementation.

The purpose of the study is to analyse the mechanism for ensuring the implementation of constitutional political rights and freedoms to clarify the role and importance of institutional guarantees in the process under study. Completing the following tasks is necessary to do this:

- highlight the content and concept of an integral element of this mechanism – institutional guarantees of constitutional political rights and freedoms;
- describe the institutional guarantees of constitutional political rights and freedoms of person and citizen in Ukraine;
- review the scientific papers of constitutional researchers who have investigated the mechanism of ensuring human and civil rights and freedoms;
- generalise theoretical approaches to the problems of ensuring constitutional rights and freedoms and suggest ways to improve them.

Results and Discussion

Individual rights and freedoms are one of the greatest achievements of modern civilisation. Back in the

early 20th century B. Kistiakovsky argued that in a state governed by the rule of law, the basis of a legal order is the freedom of the individual and their inviolability. He justified the ideal of a "legal person", that is, a person, on the one hand, disciplined through law and stable order, and on the other – endowed with all the rights that they can freely use.

A priori, the essence of the state is highlighted through its human rights policy. However, the implementation of rights depends not only on the state but also on the level of the general legal culture of society and the individual. Ukraine, which gained independence, declared that a person, their life and health, honour, dignity, inviolability, and security are recognised as the highest social value. It is the situation in the field of ensuring human and civil rights and freedoms, their practical implementation, that is the criterion by which the level of democratic development of the state and society is assessed.

Political rights and freedoms of person and citizen are an element of the constitutional system of fundamental rights, freedoms, and duties of a person in Ukraine. Political rights and freedoms of citizens embody the individual's ability to take part in political life and the exercise of state power. This category of rights includes: the right to freedom of association in political parties and public organisations, the right to take part in the management of state affairs, in all-Ukrainian and local referendums, the right to elect and be elected to state authorities and local self-government bodies, the right to appeal to state authorities, local self-government bodies and officials of these bodies.

One of the elements of the mechanism for ensuring the implementation of constitutional political rights and freedoms of person and citizen is their guarantees. The etymological meaning of the term "guarantees" in French means "to provide" or "to vouch". Guarantees of rights and freedoms in the theory of constitutional law are considered differently, namely as:

- one of the basic principles of the constitutional and legal status of a person [2] or an element of the legal status of a person [3];
- a system of norms, principles, conditions, and requirements that ensure in their totality the exercise of constitutional rights, freedoms, and legitimate interests of a person and citizen [4-5];
- the obligations of the state to protect a person, create legal, social and cultural conditions for the realisation of their rights and freedoms, and the activities of international and state organisations for the protection of human rights [6];
- the conditions and means that the state creates for citizens to exercise their fundamental rights [7];
- a system of conditions, methods, and means that provide each level with legal opportunities for identifying, acquiring, and exercising rights and freedoms [8];

- a set of objective and subjective factors aimed at the practical implementation of rights and freedoms, eliminating possible obstacles to their full or improper implementation [9];

- phenomena that contribute to the exercise of human rights and freedoms, ensure their protection and protection [10];

- an integral system of legal and social measures of various functional orientations, which is characterised by the property of translating the normative attitudes of the legislator into the practice of social relations [11];

- the essence of expressing the social responsibility of the state, the duties of its bodies and officials to create all the necessary conditions for citizens to exercise their rights and freedoms and provide a person with reliable tools for their protection [12];

- the creation of such legal institutions that by legal means would ensure the possibility of exercising rights and fulfilling obligations, and consolidate and protect the rights of citizens from violations by individual officials, state bodies, and citizens [13].

Based on the above, guarantees are considered not as statically available conditions and means of ensuring human and civil rights and freedoms but as dynamic duties of the state, its bodies, and officials to constantly create favourable conditions and provide effective means of their implementation.

Modern coverage of guarantees occurs mainly in two ways. The first way – guarantees are considered as a condition or means of implementing a legal provision. In this direction, the legal mechanism, the existing legal provision and the content of which need to be implemented are mainly investigated. The second way provides an opportunity to explore guarantees as a mechanism for the realisation of natural human rights and freedoms. Implementation is based on the moral and legal category of human rights, which exists independently of the state, has a universal character, and therefore its consolidation in the normative regulation of the state is one of the types of guaranteeing rights. Researchers identify guarantee levels. The lower one is the actual consolidation, the middle one is the legislative establishment of the security mechanism, and the higher one is the trouble-free process of implementing a legal claim.

Thus, guarantees can be considered as a structural element of the mechanism for ensuring the implementation of both rights and freedoms in general, and constitutional political rights and freedoms of person and citizen in particular. It is a system of norms of principles, conditions, and means that ensure in their entirety the exercise of constitutional political rights, freedoms, and legitimate interests of a person and citizen.

Constitutional political rights and freedoms of person and citizen are part of the general system of

all types of constitutional subjective rights and freedoms. The action of constitutional norms, principles, and means mediated in the constitutional and legal regulation of status legal relations, the creation of conditions for the unhindered exercise of political rights and freedoms is a system of structural elements, each of which performs its own role and occupies its own place in the mechanism for ensuring the implementation of opportunities [5; 14].

In the specialised literature, ensuring political rights and freedoms is considered as a system for guaranteeing them in the form of a set of positive conditions and special means that ensure their rightful implementation [15]. According to K. Tolkachova, A. Khabibulina, this approach to defining the concept of ensuring rights and freedoms can be used for constitutional personal rights and freedoms [16].

This approach is acceptable for personal rights, and with regard to ensuring constitutional political rights and freedoms, it is advisable to examine the legal (special) and organisational (general) guarantees of these rights.

The system of guarantees of political rights and freedoms of person and citizen covers the conditions and means of political, economic, social, ideological, legal directions necessary for their implementation, in particular, the mechanism of their protection.

Among political, economic, social, ideological, and legal guarantees, an important place is occupied by institutional guarantees that provide for the activities of state and non-state organisations that create favourable conditions, protect constitutional political rights and freedoms from offences, and take part in the reproduction of violated rights.

The Constitution of Ukraine (Art. 3) establishes the main duty of the state to establish and ensure human rights and freedoms. According to Art. 92 of the Basic Law, the Parliament of Ukraine should determine exclusively by laws the subjective rights and freedoms of a person and citizen, guarantees for their implementation and basic duties. According to the Constitution of Ukraine (Art. 6), state power operates on the principle of dividing power into legislative, executive, and judicial. Legislative power in Ukraine is exercised by the parliament, executive power is exercised by the Cabinet of Ministers of Ukraine and other executive authorities, and judicial power is exercised by the Constitutional Court of Ukraine and courts of general jurisdiction. An important place in this system is occupied by the President of Ukraine and other control and supervisory bodies of state power.

In the system of state authorities, the guarantee of human rights and freedoms in general and constitutional political rights belongs to the Verkhovna Rada of Ukraine. The priority function of the Verkhovna Rada of Ukraine is legislative. According to

the Constitution of Ukraine, the Verkhovna Rada has the right to adopt laws, resolutions, and other acts. Only the laws of Ukraine should regulate the issue of human and civil rights and freedoms, guarantees of these rights and freedoms, and the basic duties of citizens (paragraph 1 of Art. 92 of the Constitution of Ukraine). An example is the laws of Ukraine “On the Verkhovna Rada Commissioner for Human Rights”, “On political parties in Ukraine”, “On public associations”, etc. Any law adopted by the Verkhovna Rada of Ukraine contributes to the protection of human and civil rights and freedoms by reducing the number of gaps in legislation regarding the activities of a certain state authority, enterprise or institution, other state organisation, person, group of persons, and other possible subjects of the rule of law and civil society. In this case, the principle applies, according to which the state authority (local self-government) is allowed what is directly defined in the law, and the person (person, citizen, and their association) – everything that is not prohibited by law. Resolutions of the Verkhovna Rada of Ukraine also contribute to this implementation.

Of interest is the resolution of the Verkhovna Rada of Ukraine of June 17, 1999, “On the basics of the national policy of Ukraine in the field of human rights”. This normative document established the principles and directions of national policy in the field of human rights. It is a kind of foundation on which the activities of the system of state bodies in the field of guaranteeing human rights are based. In the resolution, among other areas of improvement in ensuring the implementation of human and civil rights, attention is focused on the problem of improving legislation on financing the activities of the most popular political parties and developing the legal basis for using and strengthening legal guarantees for the protection of the constitutional right of citizens to hold peaceful assemblies, rallies, marches, and other demonstrations by adopting the relevant law [17].

In this context, it should be noted about the national strategy in the field of human rights, approved by Presidential Decree No. 119/2021 of March 24, 2021. Its purpose is to ensure the priority of human rights and freedoms as a determining factor in the process of forming and implementing national policy, exercising the powers of state authorities and local self-government bodies, and conducting economic activities. The result of the strategy implementation should be the introduction of a systematic approach to ensuring human rights and freedoms, coordination of actions of state authorities, local self-government bodies, civil society institutions, business entities, the creation of an effective mechanism for the implementation and protection of human rights and freedoms in Ukraine, the elimination of systemic

shortcomings that underlie violations identified by the European Court [18].

The next area of activity of the Verkhovna Rada of Ukraine to guarantee human and civil rights and freedoms (including political rights) is the function of parliamentary control, which is conducted through the Commissioner for human rights of the Verkhovna Rada of Ukraine. In more detail, the features of the organisation and activity of this institution are highlighted in the research of modern Ukrainian researchers [19]. Further publications should focus on the problems and prospects of improving its status, considering numerous appeals from citizens, broad competence, and role in the system of guaranteeing the protection of constitutional human rights and freedoms.

The President of Ukraine is recognised as the guarantor of human and civil rights and freedoms (including political ones) (Art. 102 of the Constitution of Ukraine). It is the President of Ukraine, as the head of the Ukrainian state acting on its behalf, who guarantees the observance of constitutional human and civil rights and freedoms in Ukraine. By providing them, the president creates conditions for their implementation, protects, and restores constitutional rights and freedoms. The President of Ukraine can create conditions that guarantee political rights and freedoms by implementing rule-making, executive, constituent, controlling, coordinating, educational, and international functions. Ensuring the constitutional political rights of a person and citizen is entrusted to the executive authorities. The highest body in this system is the Cabinet of Ministers of Ukraine. It is responsible for taking measures to ensure human and civil rights and freedoms (Art. 116). As the highest collegial body, it should ensure political human rights both directly and through central and local executive authorities, direct and control their activities in this direction. The role of executive authorities in ensuring political rights and freedoms of person and citizen is to execute such measures:

- implementing the Constitution and laws of Ukraine, decisions of the Constitutional Court of Ukraine, acts of the President of Ukraine, programmes of relevant executive authorities;
- implementing of constant monitoring of the implementation of the Constitution and legislative acts of Ukraine, taking measures to eliminate the shortcomings of the work of these bodies;
- ensuring consideration of appeals of citizens and their associations;
- implementing measures to organise information and education of the population.

Ensuring political rights and freedoms and exercising duties is entrusted to the judicial authorities (the Constitutional Court of Ukraine and courts of general jurisdiction), the prosecutor's office (Art. 121,

124, 147), and other law enforcement agencies. The Verkhovna Rada and the Council of Ministers of the Autonomous Republic of Crimea are obliged to take part in ensuring the rights and freedoms of citizens (paragraph 7 of Art. 138). Recent reforms in Ukraine demonstrate the need to change the forms and methods of work of judicial and law enforcement agencies, overcome corruption, and increase their transparency and efficiency. Therefore, the conclusions and recommendations provided in a number of scientific papers on this issue are valuable [20-29].

Issues of ensuring rights and freedoms are decided by territorial communities, their bodies, and officials (Art. 143). Citizens of Ukraine may unite in political parties and public organisations to protect their rights, freedoms, and legitimate interests (Art. 36). The Constitution of Ukraine guarantees political diversity (Art. 15), etc. [30-34].

Therewith, the realities of today indicate the need to attract public, state, and the scientific community attention to a thorough analysis of the specific features of ensuring, in particular, guaranteeing certain rights and freedoms related to the involvement of a person and citizen in the political life of society: the right to citizenship, freedom of movement, free choice of place of residence, the right to freedom of thought and speech, the right to freedom of association in political parties and public organisations, the right to take part in the management of state and public affairs, the right to rallies, marches, and demonstrations, the right to appeal to the authorities, etc.

The definition of institutional guarantees as established by the Constitution, laws, and other normative regulations of the system of national, central, and local bodies and ones of local self-government, public associations that are authorised to create favourable conditions, resort to effective means and measures to ensure the implementation of constitutional political rights and freedoms of person and citizen is formulated in a generalised form.

Conclusions

Based on the above, it can be argued that institutional guarantees for ensuring constitutional rights and freedoms of person and citizen are considered not as statically available conditions and means of ensuring human and civil rights and freedoms but as dynamic duties of the state, its bodies and officials to constantly create favourable conditions and provide effective means of their implementation.

The dynamics of the development of the legislative framework demonstrates trends in modernising the system of institutional guarantees for ensuring political rights and freedoms of person and citizen in Ukraine, expanding the system of bodies and organisations authorised to conduct such an honourable mission for the benefit of a person as the highest social value, meeting their needs and interests. Admittedly, there are many tasks ahead, both at the national and local levels, but it is important for their resolution to be systematic and consistent, effective and timely, accessible to everyone.

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Інституційні гарантії конституційних політичних прав і свобод людини та громадянина в Україні

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Анотація

На підставі узагальнення і систематизації теорії та практики конституційного права в науковій статті висвітлено актуальні питання механізму реалізації конституційних політичних прав і свобод. Мета статті – аналіз механізму забезпечення реалізації конституційних політичних прав і свобод для визначення ролі та значення інституційних гарантії у цьому процесі. У процесі дослідження використано комплекс методів і методологічних підходів. Зокрема, визначальними стали формально-юридичний і структурно-функціональний, системний і порівняльно-правовий методи, методи аналізу й синтезу, прогнозування тощо. В узагальненому вигляді інституційні гарантії можна визначити як закріплену Конституцією, законами й іншими нормативно-правовими актами систему загальнодержавних, центральних та місцевих органів і посадових осіб, органів, посадових осіб місцевого самоврядування, громадських об'єднань, які уповноважені на створення сприятливих умов, вдаватися до ефективних засобів і заходів щодо забезпечення реалізації конституційних політичних прав та свобод людини й громадянина. На підставі викладеного в науковій статті матеріалу можна стверджувати, що інституційні гарантії забезпечення конституційних прав і свобод людини та громадянина розглядають не як статично наявні умови та засоби забезпечення прав і свобод людини й громадянина, а як динамічні обов'язки держави, її органів і посадових осіб постійно створювати сприятливі умови та надавати ефективні засоби їх реалізації. Динаміка розвитку законодавчої бази демонструє тенденції модернізації системи інституційних гарантії забезпечення політичних прав і свобод людини та громадянина в Україні, розширення системи органів та організацій, уповноважених на здійснення такої почесної місії на благо людини як вищої соціальної цінності, задоволення її потреб та інтересів

Ключові слова:

Конституція України; механізм забезпечення; конституційні політичні права і свободи; інституційні гарантії