

TYPES OF GUARANTEES AND PROHIBITIONS AS AN ELEMENT OF THE MECHANISM FOR ENSURING THE SOCIAL RIGHTS OF CIVIL SERVANTS IN UKRAINE

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Annotation. This scientific article is devoted to the study of types of guarantees and prohibitions as key elements of the mechanism for ensuring the social rights of civil servants in Ukraine. In the context of the development of modern public administration, the features of legal guarantees that ensure the implementation of social rights of civil servants, including the right to social protection, medical care, official housing, pensions, vacations and other social payments, are considered. Prohibitions, as an integral part of this mechanism, establish the limits of action of state bodies and employees, which ensures compliance with legal norms, prevention of offenses and violations of social rights.

The article provides a detailed and comprehensive analysis of legal guarantees and prohibitions in terms of their classification according to various criteria, such as the subject composition, the legal force of legal acts, the nature of the legal norm, and the scope of application. It highlights general and special guarantees, their procedural and substantive aspects, and also considers the differences between guarantees that operate at the national level and those that are special for civil servants.

Special attention is paid to the issues of the effectiveness of current legal guarantees and prohibitions in the context of the transformation of public administration, changes in social and legal priorities. The author concludes that it is necessary to modernize the mechanism for ensuring the social rights of civil servants, in particular through the introduction of modern legal instruments and information technologies, which will increase the efficiency of providing social rights and reduce legal conflicts that arise in the process of their implementation.

The study also emphasizes the importance of improving legal regulation, adapting regulations to the new conditions of public service, and ensuring a balance between guarantees and prohibitions to protect the interests of civil servants. The author's positions are substantiated, criticism of other scholars is provided, and social legislation in this area is analyzed.

Key words: social rights, civil servants, legal guarantees, prohibitions, provision mechanism, social security, civil service, legal regulation, Ukraine, efficiency.

1. Problem statement.

The social rights of civil servants are an important element of state social policy, since their implementation and protection directly affect the effectiveness of the functioning of the state apparatus. Civil servants play a key role in the exercise of state power, therefore, ensuring their social rights is not only a guarantee of their well-being, but also a means of increasing the efficiency of public administration. Accordingly, in the face of constant socio-economic challenges and reform of the civil service, the issue of legal provision of the social rights of civil servants is becoming particularly relevant.

One of the important aspects of the protection of social rights is the presence of guarantees and prohibitions, which are fundamental elements of the mechanism for ensuring the rights of civil

servants. Guarantees provide certain social and legal instruments for the protection of civil servants' rights, in particular in the field of labor relations, social security, housing and living conditions, while prohibitions are aimed at preventing violations of these rights, ensuring legal certainty and law and order.

However, in practice, the functioning of these guarantees and prohibitions faces a number of problems, including their ineffective legal regulation and insufficient detail in the legislation. Frequent changes in legislation, incomplete regulation of individual social rights and the possibility of their implementation, in particular, due to excessive bureaucratization of procedures, create obstacles to the full implementation of the social rights of civil servants. In addition, the lack of a clear system of monitoring compliance with guarantees, as well as insufficient responsibility for violation of prohibitions, complicate the process of ensuring adequate social protection.

Therefore, the study of the types of guarantees and prohibitions as an element of the mechanism for ensuring the social rights of civil servants is extremely important for the development of effective legal instruments aimed at protecting social rights. Establishing a clear legal structure of these elements will ensure the stability of social protection of civil servants, increase legal certainty and ensure a balance between rights and obligations in the field of civil service.

2. The state of development of this issue.

It is worth noting that the mechanism for ensuring social rights is still poorly studied. Certain general issues were highlighted in the scientific works of the following scientists: V.A. Bahriy, Yu.G. Barabash, Yu.A. Budnyk, L.M. Bulkat, V.Ya. Buryak, A.P. Gorzov, O.G. Danylyan, O.A. Dolgy, T.P. Yegorova-Lutsenko, O.S. Kalyan, Yu.V. Kuzmenko, I.V. Lagutina, O.V. Muza, V.V. Nazarov, Yu.Yu. Paidia, S.P. Paranytsia, M.I. Popadynets, M.V. Savchyn, D.P. Sadchykov, V.V. Skorikov, B.I. Stakhura, G.V. Foros, Yu.S. Shemshuchenko, I.A. Shumilo and others.

3. The purpose of the article is to analyze the classification of guarantees and prohibitions as an element of the mechanism for ensuring the social rights of civil servants in Ukraine.

4. Presentation of the main material.

Investigating the issue of guarantees of civil servants' official activities, M. I. Inshin suggests classifying them according to several criteria, in particular, by the subject of application, legal force of the legal act, direction, form of expression, significance, type of legal norm and object of protection [1, p. 181]. Such a variety of classifications emphasizes the complexity and multifacetedness of guarantees, because they must cover not only social rights, but also foresee possible violations and obstacles during their implementation. Each of these criteria plays an important role in ensuring effective protection of the social rights of civil servants. The criterion of the subject of application allows us to distinguish between general guarantees that apply to all citizens or employees of a certain field, and special guarantees that are provided exclusively to civil servants. Special guarantees include protection against unlawful dismissal, social security during vacations or business trips, as well as the right to medical care and pension provision on special conditions. General guarantees, in turn, cover the protection of fundamental social rights, such as the right to a decent standard of living, the right to work and leisure.

The legal force of a legal act determines the importance of guarantees and their binding nature. For example, guarantees enshrined at the level of the Constitution of Ukraine have the highest legal force and cannot be limited by ordinary legislative acts. Other guarantees may be enshrined in laws or by-laws, where they specify or detail the main provisions of constitutional rights. The direction of guarantees indicates their functional purpose. Some guarantees are aimed at creating conditions for the implementation of social rights, others at protecting against violations or providing compensation in the event of their restriction. For example, social insurance guarantees protect civil servants in the

event of temporary incapacity for work or loss of work capacity. The form of expression of guarantees can be both material and procedural. Material guarantees determine specific benefits or rights provided by the state (for example, the provision of official housing), while procedural guarantees relate to the procedure for implementing or protecting these rights (for example, the procedure for submitting applications for social assistance or the conditions for its provision).

The importance of guarantees can also vary: some guarantees are basic and indispensable for ensuring fundamental social rights, while others are auxiliary or supportive in nature. Determining the importance of guarantees allows us to establish their priority and necessity in different situations. For example, the provision of housing is a critically important guarantee for employees working in remote regions or with specific working conditions. The type of legal norm that regulates guarantees can be different: the norms can be both substantive, determining the content of rights and obligations, and procedural, regulating the mechanisms for the implementation of these rights. Procedural norms guarantee protection against abuse or incorrect application of substantive norms, which is especially important in the context of the civil service, where the risks of violations are significant due to bureaucratic mechanisms. The object of protection of guarantees covers a wide range of social rights, including the right to social security, the right to health care, the right to rest and other socio-economic rights. The protection of these rights involves ensuring equal access to social benefits and protection against discrimination or unlawful restriction of the social rights of civil servants.

Thus, guarantees and prohibitions, as elements of the mechanism for ensuring social rights, play an important role in regulating the activities of civil servants and protecting their rights. They are enshrined in various legislative acts, can be both general and special, material or procedural in nature, and also vary in scope.

First of all, guarantees of social rights are enshrined in the Constitution of Ukraine, where Article 13 defines the state's obligation to "ensure the social orientation of the state"; Article 24 enshrines "equality of rights and freedoms, equality before the law"; Article 36 states that restrictions on the right to participate in trade unions can be established only by the "Constitution and laws of Ukraine" [2]. Such guarantees determine the general vector of development of social security activities, determine priorities for compliance with equality, prohibition of forced labor, freedom of action and the possibility of only legal restrictions on social rights. The social orientation of the economy guarantees the obligation to provide funds to assist vulnerable categories of the population and the availability of funds for material and social support of employees who are in labor relations with the state.

Also, guarantees of social rights of civil servants are found in the Labor Code [3]. The Code contains guarantees of rest, proper and safe working conditions, pay and labor discipline, prohibitions on excessive workload and night work. Measures to protect women's rights are defined, as well as guarantees of obtaining leave or flexible working conditions for employees caring for their child until he reaches the age of 3. A significant part of the guarantees is not duplicated in specialized legislation, which makes their application necessary and integral to ensuring the social rights of civil servants.

Separately, it is necessary to consider guarantees of stability of social rights of civil servants. Thus, guarantees of stability prevent the occurrence of social risks for civil servants, and also encourage their long stay in the civil service. As one of the guarantees, it is possible to consider a ban on reducing the amount of social assistance or remuneration, as well as defining them exclusively in the law. This helps to avoid situations with an unforeseen decrease in material support, and therefore the ability to realize all their vital needs, and also makes it impossible to subjectively assess the work of civil servants, in the case of corruption relations in this area. Another guarantee of stability is defined in Part 2 of Article 55 of the Budget Code of Ukraine, according to which budget expenditures are protected if they are "remuneration, accruals to wages, payment for utilities or purchase of medicines, training of personnel by higher educational institutions" [4]. Thus, regardless of the size of the state budget and the economic situation in the state, salaries for civil servants must be paid in full, as established by law. The implementation of this guarantee is also protected by numerous decisions of the Constitutional Court of Ukraine. In addition, Article 83 of the Law of Ukraine "On

Civil Service" [5] can be considered a guarantee of stability, which clearly establishes the grounds for termination of civil service. The presence of grounds limits arbitrariness and pressure from the head of the civil service or other officials of state bodies. Although the legal regulation of individual grounds requires detail, especially regarding the establishment of incompatibility with the position held or the commission of a disciplinary offense.

The guarantee of the implementation of social rights by civil servants is the obligation of their participation in the mandatory social and pension insurance, which ensures a minimum standard of living for him and his family members after the civil servant loses his ability to work or the occurrence of other events that disrupt the usual and predictable way of life. Participation in social insurance corresponds to the principle of equality, since it is common for all employees, and the procedure for paying social assistance or pension is clearly defined in regulatory legal acts. This guarantee is supplemented by the obligation for the manager to make insurance contributions for the civil servant and the presence of legal liability for their violation.

Guarantees for the implementation of certain social rights by civil servants have a rather controversial legal basis. For example, guarantees of the right to official housing for civil servants are defined in the Resolution "On Official Housing" [6]. Analyzing this regulatory legal act, it becomes noticeable how difficult it is to implement social rights, and guarantees regarding the legality of its receipt are quite questionable due to the lack of clear deadlines, the use of outdated terminology, and the excessive number of subjects who can subjectively assess the need for housing. For their part, guarantees of education, housing, and medical care for diplomatic servants operate effectively due to the availability of funding and a clear list of documents that must be provided to receive compensation. It is worth clarifying that guarantees of receiving medical services for civil servants are of a general nature, that is, they relate to free of charge, equality of treatment, and efficiency and scientificity of assistance. Guarantees of protection are also common, because civil servants can defend their social rights in administrative or judicial proceedings, although there is no right to strike.

Another type of legal guarantees for the implementation of social rights by civil servants should be considered guarantees of the activities of specially authorized public authorities. These include guarantees established in the Law of Ukraine "On Civil Service" [5], for example, independence, impartiality, prohibition of interference in the activities of officials, the mandatory legality of orders and their issuance in writing. We also consider as guarantees regulatory legal acts that determine the scope of powers, tasks and functions of public authorities that support the implementation of social rights, ensure or protect them. In addition, guarantees are legislative acts on individual aspects of ensuring the implementation of social rights, such as social and household security or the procedure for calculating salaries for civil servants. Such guarantees are mainly procedural and procedural in nature and help to better understand what actions are permitted and what means of protection can be used to implement social rights.

5. Conclusions.

Thus, legal guarantees and prohibitions as elements of the mechanism for ensuring the social rights of civil servants are an important tool of the legal system aimed at ensuring the effective fulfillment of the state's social obligations to civil servants. They are intended not only to limit possible offenses by both civil servants and other involved entities, but also to create conditions for the effective implementation of social rights.

Legal guarantees serve as a basis for ensuring stability and predictability in the field of social security for civil servants, they define minimum standards that the state must adhere to when providing social benefits. On the other hand, legal prohibitions prevent violations of these standards, providing additional protection against abuse, unlawful restriction of social rights or their insufficient implementation.

However, it is important to emphasize that legal guarantees and prohibitions should complement each other, and not duplicate each other, as duplication can lead to legal conflicts and create gaps in legal regulation. For example, if the guarantee of providing official housing is not supported by

clear prohibitions on its non-provision or refusal without proper reasons, this may contribute to the non-observance of social rights. Thus, it is necessary to ensure harmonious cooperation between the legal norms that establish rights and guarantees and those that define prohibitions and liability for their violation.

In addition, it should be noted that a number of legal guarantees enshrined in current legislation have lost their effectiveness in modern conditions. The reason for this is their outdated nature, which does not take into account the new realities of the functioning of public authorities and the challenges that arise in the process of ensuring the social rights of civil servants. For example, the introduction of new information technologies into public administration requires updating legal guarantees that will ensure more efficient and transparent fulfillment of social obligations.

At the same time, the development of digital technologies and the transition to e-government open up new opportunities for improving the mechanisms for implementing and ensuring social rights. The introduction of such innovative tools as electronic platforms for the provision of social services, automated systems for accounting and monitoring the implementation of social obligations will contribute to greater objectivity, transparency and efficiency in the process of ensuring the social rights of civil servants.

Thus, legal guarantees and prohibitions are key elements of the mechanism for ensuring the social rights of civil servants, but they require constant updating and adaptation to changes in the socio-economic and technological environment. To ensure their effective operation, it is necessary to take into account modern challenges and develop new legal approaches that will meet the needs of modern civil service and ensure an adequate level of social protection of civil servants.

References:

1. Inshin M. I. Classification of legal guarantees of official and labor activity of civil servants. Scientific notes of the Tavrichesky National University named after V. I. Vernadsky, 2009. Vol. 22 (66). No. 2. Pp. 177–183.
2. Constitution of Ukraine: Law of Ukraine dated 28.06.1996 No. 254k/96-VR. Bulletin of the Verkhovna Rada of Ukraine (VVR). 1996 No. 30. Art. 141.
3. Labor Code: Law of Ukraine dated 10.12.1971 No. 322-VIII. Bulletin of the Supreme Soviet of the Ukrainian SSR. 1971. No. 50.
4. Budget Code of Ukraine: Law of Ukraine dated 08.07.2010 No. 2456-VI. Bulletin of the Verkhovna Rada of Ukraine (VVR), 2010. No. 50-51. P. 1778.
5. On civil service: Law of Ukraine dated 10.12.2015 No. 889-VIII. Bulletin of the Verkhovna Rada of Ukraine (VVR). 2016. No. 4 P. 43.
6. On official residential premises: Resolution of the Ministers of the Ukrainian SSR dated 04.01.1988 No. 37. URL: <https://cutt.ly/rcWEVOF> (Date of access: 02.04.2024).