

FEATURES OF IMPLEMENTATION OF GENERAL AND SPECIAL GUARANTEES OF CONSTITUTIONAL AND LEGAL STATUS OF CONVICTS: PROBLEMS OF THEORY AND PRACTICE

 **Dyakova Albina**

DOI: <https://doi.org/10.61345/1339-7915.2025.4.4>

Annotation. Purpose of the work. The method of this research is a comprehensive study of the implementation of general and special guarantees of constitutional and legal status of convicts in Ukraine. Convicts in Ukraine, as in any other state, are a sufficiently specific category, the implementation of rights and freedoms, which are created in connection with the occurrence of a number of objective and subjective factors. The lack of scientific research that covered a comprehensive approach to all components of the constitutional and legal status of convicts determines the relevance of this study.

Methodological basis of the study. The work uses an analysis of legal and scientific literature, comparative law and systemic approaches to study the guarantees of the constitutional and legal status of convicts. Special attention was paid to the classification of guarantees into general and special, as well as their specific relationship. General guarantees are considered as the basis for the implementation of special, including political, economic, ideological and social aspects, while special guarantees are offered by legal, legal, regulatory and organizational mechanisms, supplemented by international legal and international organizational mechanisms.

Results. The role of general guarantees in creating the initial conditions for ensuring the legal status of convicts, in particular political, ideological and social components, is analyzed. It is established that economic and political guarantees ensure the functioning of the legal system and the implementation of special legal guarantees. It is determined that regulatory, organizational, international legal and international organizational guarantees are interconnected and form a holistic system for ensuring the rights and freedoms of convicts.

Conclusions. Convicts have a full-fledged constitutional and legal status, each element of which requires appropriate guarantees. Guarantees function as a purposeful system, within which a balance is ensured between general and special guarantees. Each group of players guarantees a decisive role in ensuring the implementation of all components of the constitutional and legal status of convicts. A comprehensive approach to their classification and interrelationship creates conditions for effective provision of the rights and freedoms of this category of persons.

Key words: constitutional and legal status, conviction, guarantees, rights and freedoms, legal guarantees, general guarantees, rule of law.

1. Introduction.

Convicts in Ukraine, as in any other state, are a rather specific category, the implementation of whose rights and freedoms is carried out in connection with the occurrence of a number of factors, both objective and subjective. Moreover, there may be much more factors that negatively affect the implementation of the rights and freedoms of convicts than those that concern other categories of persons. All this puts on the agenda the issue of guaranteeing the constitutional and legal status of convicts and increases the relevance of its research. In the scientific literature, one can find an analysis of only the implementation of guarantees regarding only some rights of convicts, but scientific research within the framework of which the issue of a comprehensive approach to all components of the constitutional and legal status of convicts is almost absent. This determines the relevance of the

study of the implementation of both general and special guarantees of the constitutional and legal status of convicts, which are given in this article.

In the context of understanding the guarantees of the constitutional and legal status of convicts, the etymology of the word «guarantee» should be borne in mind, which has its origin from the French language and is revealed through such aspects as «collateral», «safety», «security».

The dictionary of the Ukrainian language states «GUARANTEE, n, f. A pledge in something, security for something. Conditions that ensure the success of something. Diligent sorting of ears of corn on the currents is another guarantee of better storage of grain in state bins (Rad. Ukr., 12.X 1962, 1)» [1].

2. Analysis of scientific publications.

In the legal literature, and primarily in relation to rights and freedoms, the issue of guarantees is given due attention. This issue is paid attention to by such scholars as K.G. Volynka, M.M. Gurenko, I.V. Drobush, O.G. Kushnirenko, A. Matvienko, O.A. Mykhailiuk, O.V. Petryshyn, P.M. Rabinovich, V.O. Seryogin, Y.M. Todyka, M.I. Khavronyuk, L.G. Shuklina and others.

At the same time, the mentioned authors, first of all, paid attention only to constitutional rights and freedoms, almost bypassing other elements of the constitutional and legal status of convicts, and secondly, their attention was concentrated on the general status. At the same time, for example, L.I. Letnyanchyn, emphasized the need to raise the issue of guaranteeing not only rights and freedoms, but also constitutional obligations [2].

In addition, some authors paid attention to guarantees of the constitutional and legal status of special subjects:

- V.Y. Pashinsky, The concept and structure of the constitutional and legal status of military personnel;
- Bukach V., Kaminska N., Medvid L., Institutional guarantees of constitutional political rights and freedoms of man and citizen in Ukraine;
- S.V. Romantsova, Legal guarantees of ensuring the rights, freedoms and legitimate interests of citizens in the institutions of the State Penitentiary Service of Ukraine (2023);
- O.V. Galtsova, The right to judicial protection as a legal guarantee of the rights and freedoms of convicts (2019);
- O.S. Pochanska, Classification of guarantees of the rights of citizens sentenced to imprisonment in Ukraine (2020);
- R. Shai and S. Lupiy, The legal nature of the labor of convicts, its goals, objectives and features of regulation (2023).

And also V.F. Pohorilko, O.F. Frytsky, O.V. Skrypnyuk, O.D. Svyatotsky.

Therefore, based on this, there is still a lack of legal works in the scientific space that would concern the comprehensive guarantee of all components of the constitutional and legal status of convicts.

If we analyze the legal literature, we can conclude that there are the following main approaches to guarantees: they are considered as obligations of the state; objective and subjective factors; conditions, means and methods; a system of legal conditions; means, methods and mechanisms provided for by law; principles and norms; unconditional requirements. It is worth noting that all these instructions separately emphasize only certain aspects of guarantees and each of them does not reflect the entire palette of components of guaranteeing rights, freedoms and obligations.

3. Purpose of the work.

The purpose of this study is a comprehensive study of the implementation of general and special guarantees of the constitutional and legal status of convicts in Ukraine. Convicts in Ukraine, as in

any other state, are a rather specific category, the implementation of whose rights and freedoms is carried out in connection with the occurrence of a number of objective and subjective factors. The lack of scientific research that would cover a comprehensive approach to all components of the constitutional and legal status of convicts determines the relevance of this study.

4. Review and discussion.

Given the specifics of the constitutional and legal status of convicts, the guarantees of this category of persons cannot be separated from those guarantees that concern a person and a citizen in general. That is why we do not agree with L.V. Mikhnevich, who formulated the position that guarantees can be divided into general ones that concern a person and a citizen in general (for example, judicial protection) and special ones that are inherent in the protection of individual persons [3].

After all, it is worth pointing out that judicial protection, which the researcher points to, is the core of the entire system of guaranteeing all categories of subjects, including special ones. Moreover, all the other mechanisms that I am referring to rights and freedoms of a person and a citizen can also be applied to convicts with certain variable features or without them.

It is also worth noting that in legal science a fairly widespread approach has been formulated, which is associated with the division of guarantees into general and special, but not in the context of subjects, but in the aspect of the specialization of the impact of such guarantees. Since the constitutional and legal status of convicts is a legal category and each of their elements is within the scope of law, but at the same time is not and cannot be separated from a wide range of components of a wide range of being, such a division seems quite logical, which includes both general guarantees, political, economic, organizational, ideological and some other aspects, and special ones are purely legal, legal.

General guarantees serve as the basis for the implementation of special guarantees, which in some cases can only correct, clarify, change the focus of such implementation. For example, economic guarantees, which include the appropriate level of economic development and the state budget, part of the funds can be spent on resolving issues of ensuring the constitutional and legal status of convicts, can only be adjusted by law, within which the features of allocating such funds and the specifics of solving tasks within the framework of such financing can be determined. At the same time, if the state does not have enough funds, then no law can change this. At the same time, legal guarantees can have a clearly expressed self-sufficient nature, the implementation of which will be decisive for guaranteeing all components of legal status. For example, such a guarantee as the consolidation of rights, freedoms and obligations only by law or the existence of a judicial system.

The primary classification is the division into general and special guarantees. Before describing each of the elements, it should be noted that the guarantees are interconnected.

General guarantees are basic, fundamental, in relation to special ones. Since, as we have already said, the functioning of the legal and judicial system depends on their economic, political system, their stability. Moreover, if we talk about the features of the implementation of economic guarantees, then we can still see a significant legal basis, since the main economic processes or political actions cannot be implemented in isolation from law, from legal regulation. That is why, it should be said that, say, economic guarantees, in modern conditions, acquire the status of economic and legal guarantees, since they are regulated by the norms of law in one way or another. Or in other words, we can say that economic guarantees, as part of the implementation of the economic function of the state, are implemented in the relevant legal norms (lawmaking - within which a law is formed that regulates economic relations; the law-making form - when an institutional mechanism for the implementation of such laws is introduced; the law-enforcement form - when the norms of the relevant laws are actively implemented; the control form - when legality is checked during such law-enforcement).

It is precisely because general social guarantees are basic that we will begin the analysis of the entire set of guarantees of the constitutional and legal status of convicts with them. As already noted, they include various guarantees that differ in the sphere of social relations within which they are implemented.

We consider it necessary to begin the analysis of individual types of such guarantees with political guarantees, because in our opinion, in this system they are decisive and direct the specifics of the implementation of all others. Back in 2004, P.M. Rabinovich and M.I. Khavronyuk pointed out that political factors can slow down and restrain the development of economic and other relations, which will not allow creating a system of proper economic, social, ideological legal guarantees of rights and freedoms [4].

Such guarantees include: the stability of the political system, its openness and adaptability, a sufficiently high level of political culture, both among political actors and among the general population, including convicts, stable traditions of parliamentarism, the existence of real political parties as a real part of society, the fulfillment of election promises, freedom of political processes, the ability of political actors (subjects) to respond to real, social demands of society and its individual strata, etc. General guarantees of the constitutional and legal status of convicts include ideological guarantees, which, based on taking into account political and economic guarantees, will supplement them and create additional conditions for the reliable implementation of all components of such a status. Undoubtedly, in modern conditions, ideological guarantees do not play the role that they played in Soviet times, but at the same time their significance cannot be reduced because they create, respectively, ideological and spiritual value foundations. In Ukraine, today, there is a fairly strict definition of the ideological component possibility of diversity and impossibility of existence of one generally binding ideology. Article 15. KU.

However, despite this, there is a whole range of complex ideologies that have a significant level of bindingness. For example, the idea of human rights, human centrism, has, given the requirements of the current constitution, a sufficiently high level of bindingness. In general, the ideological components of guaranteeing the legal status of convicts include the desire of society and the state to increase the level of legal and general culture of the general population. Such a desire in general, which is aimed at gradually increasing the level of such culture and achieving the appropriate level, creates conditions for increasing awareness of their rights and obligations by both the general population and convicts. In addition, the appropriate level of legal culture is manifested in the ability to use all tools of human rights protection. These guarantees also include a stable level of implementation of spiritual and moral values, which serves as a guarantee against gross and immoral offenses resulting in violations of human rights.

It is in this context that it should be understood that further activity in the field of forming high spiritual values and clear spiritual orientations, especially among convicts, serves as one of the primary guarantees of non-violation of the rights of convicts by other convicts. In particular, this concerns the right to dignity, disrespect for the individual.

In legal literature, social guarantees are separately distinguished. However, in the broad sense of the word, the guarantees we have indicated above are already social, including legal. But if we take into account the traditional approach to the formulation of guarantees, then we can speak separately about social guarantees as a general direction. These include the social policy of the state, the formation of conditions for ensuring an appropriate social environment in places of serving a sentence, ensuring optimal employment for convicts as a guarantee against committing illegal acts, proper social security for both persons serving sentences and persons performing the functions of the colony administration.

Thus, general guarantees play a significant role and create the primary conditions for guaranteeing the legal status of convicts. At the same time, they were not effective enough and could be diluted without special legal guarantees.

Legal guarantees are a set of legal and organizational means aimed at the proper implementation and protection of all components of the constitutional and legal status of convicts.

There are many approaches to the classification of special legal guarantees, with one of the most common being the separation of two blocks within them: regulatory and organizational. Given that Ukraine is a member of a wide range of international organizations, has ratified a whole set of international acts in the field of human rights, it is probably necessary to proceed from the fact that legal guarantees are divided not into two, but four blocks. Where to the two above blocks (normative and organizational) are added two more, which concern the international component, namely international legal and organizational (we are talking about international organizations of which Ukraine is a member or participant).

In this context, it should be noted that all four blocks of legal guarantees can be considered separately only for scientific purposes. But from a practical point of view, they are inextricably linked to each other. Since any institution is to one extent or another based on legal norms, and the international component is an integral part of the organization and functioning of the national legal system.

In the system of national regulatory and legal guarantees, the principles of the constitutional order are of primary and priority importance, which, having the highest legal force even in relation to other provisions of the constitutional text, play both a direct role and create conditions for the implementation of the rights and freedoms of convicts. In particular, we can include the fact that Ukraine is a social and legal state, Article 1 of the Constitution of Ukraine «a person is considered the highest value, and the state is responsible, including before a specific person, for actions not taken, Article 3; Ukraine recognizes the principle of the rule of law, which finds its manifestation primarily in the requirement for legislation to create legal, fair, reasonable, humane laws that relate to the criminal justice system with the maximum level of legal certainty (Article 8); the legal system functions taking into account the priority of international law (Article 9); and state authorities and local self-government bodies must act only within the framework of the constitution and laws (Article 19).

The normative and legal guarantees of individual elements of the constitutional and legal status of convicts include norms that are dedicated to another element of this status. For example, the normative guarantee of observance of the rights and freedoms of convicts is the constitutional obligation enshrined in Part One of Article 68 of the Criminal Code, which states that everyone is obliged to strictly observe the Constitution and laws of Ukraine, as well as not to encroach on the rights and freedoms, honor and dignity of other people. Regulatory and legal guarantees should include not only constitutional norms, but also norms of laws and subordinate regulatory and legal acts and norms contained in other sources of law, in particular judicial precedents.

5. Conclusions.

Thus, based on the above, it is possible to conclude that convicts have a full-fledged constitutional and legal status, each of the elements of which requires ensuring the implementation of appropriate guarantees. Moreover, such guarantees should function as a holistic and complete system within which a balance between general and special guarantees should be ensured. Each group of guarantees plays its role and makes its special contribution within the functioning of this system in the direction of guaranteeing the proper implementation of all elements of the constitutional and legal status of convicts.

References:

1. Dictionary of the Ukrainian Language: in 11 vols. / NAS of Ukraine. Institute of Linguistics; edited by I. K. Bilodid. Kyiv: Naukova Dumka, 1970–1980. Vol. 2. P. 29. [in Ukrainian]
2. Letnianchyn L.I. Constitutional Duties of a Human and Citizen in Ukraine: Problems of Theory and Practice: Monograph. Kharkiv: Publisher SPD FO Vapnyarchuk N.V., 2006. 256 p. [in Ukrainian]
3. Mikhnevych L.V. Constitutional Law of Foreign Countries (General Part): Textbook-Methodical Guide for Independent Study. Kyiv: KNEU, 2005. 164 p. [in Ukrainian]
4. Rabinovych P.M., Khavroniuk M.I. Human and Citizen Rights: Textbook. Kyiv: Atika, 2004. 464 p. [in Ukrainian]