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DOI: https://doi.org/10.34069/AI/2023.72.12.22
How to Cite:
Fokina, A.O., Yushchyk, O.O., Kunenko, I.S., Ryndiuk, V.I., & Machuska, I.B. (2023). Normative determination of guarantees of political rights in the sphere of administrative justice. *Amazonia Investiga*, *12*(72), 246-253. https://doi.org/10.34069/AI/2023.72.12.22

Normative determination of guarantees of political rights in the sphere of administrative justice

Нормативне визначення гарантій політичних прав у сфері адміністративної юстиції

Received: October 29, 2023 Accepted: December 29, 2023

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Abstract

This study analyzes the normative definition of the guarantees of political rights of citizens. A dialectical methodology of knowledge of law is used, and law is interpreted as an attribute of social management of society. A legal norm is understood as a process of necessity, the elements of which are the hypothesis, disposition and sanction of the norm in their organic connection. It is shown that the political rights and freedoms of a person and a citizen are established by the disposition of the legal norm, and their guarantees are determined by the sanction of the legal norm. The public legal character of political rights conditions their guarantee by legal acts of the court of administrative justice, as a type of justice. The study concludes that improving the normative definition of the guarantees of political rights is an urgent task for the management and legal

Анотація

У цьому дослідженні аналізується нормативне визначення гарантій політичних прав громадян. Використовується діалектична методологія пізнання права, а право трактується як атрибут соціального управління суспільством. Правова норма розуміється як процес необхідності, елементами якого є гіпотеза, диспозиція та санкція норми в їх органічному зв'язку. Показано, що політичні права і свободи людини і громадянина встановлюються диспозицією норми права, а їх гарантії визначаються санкцією норми права. Публічно-правовий характер політичних прав обумовлює їх гарантування правовими актами суду адміністративної юстиції, як виду юстиції. У дослідженні зроблено висновок, що вдосконалення нормативного визначення гарантій політичних прав є актуальним завданням управління та правового

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regulation of political relations in modern society.

Keywords: administrative justice, guarantees of political human rights, legal act, legal information, legal norm.

регулювання політичних відносин у сучасному суспільстві.

Ключові слова: адміністративна юстиція, гарантії політичних права людини, правова інформація, правова норма, правовий акт.

Introduction

Constitutional consolidation of citizens' political rights and their constitutional guarantees require the definition of these guarantees in legal norms and ensuring their implementation by the courts, as the main guarantors of human rights and freedoms in a democratic legal state. Therefore, the study of the theory and practice of normative definition of guarantees of political rights is an important problem of constitutional and legal science. Political rights and freedoms are directly related to socio-political activity and participation of citizens in state administration, the decision-making process regarding the formation of power and influence on the life of the country, such as the right to participate in elections, referendums, the right to petition, etc. Therefore, the state should not only recognize the political rights of citizens, but also create conditions for their free and unimpeded realization. Creating conditions for protecting the rights and freedoms of citizens in political life, guaranteeing their political rights is an important component of their legal status. Democratic values make it possible to maintain a political culture, ensure civil liberties and political participation, exercise the right to the electoral process, which is necessary for the successful development of a democratic legal state (Stadnyk et al., 2022).

In this sense, defining the specified guarantees in legal norms and acts of current legislation is one of the priorities. Since the most effective guarantee of rights of citizens is their judicial protection, then the adequate normative definition of the protection of political rights in courts of administrative jurisdiction acquires significant importance in modern conditions. Accordingly, the article examines the concept of law and social management through their common point - legal norm; legal acts as management decisions in which legal norms are formalized in the process of law-making activity of powerful subjects. The normative definition of guarantees of political rights is connected both with the sanction of the legal norm and with decisions of administrative justice bodies. The purpose of this article is to study the problem of normative determination of guarantees of political rights of citizens from the methodological standpoint of dialectical understanding of legal norms and legal acts.

The article is structured in four sections. The first section presents the theoretical framework of the study, including the definition of the key concepts. The second section presents the methodology used in the research. The third section presents the results and examines the jurisprudence of the administrative justice courts in relation to the guarantees of political rights. The fourth section presents the conclusions of the study. This article is of interest to researchers in the branch of constitutional and administrative law, as well as to students and professionals interested in the protection of political rights.

Theoretical framework or literature review

The theoretical basis of the article is the concept of legal norms and legal acts as components of law in their dialectical understanding. This research is based on the dialectical theory (Yushchyk, 2016b) of law, which is based on the dialectical methodology and belongs to the theories of sociological legal understanding (Yushchyk, 2013). In particular, in the context of this theory, law is considered as a normative method of social management, by which a powerful subject sanction (determines and supports) the rules of behavior that constitute the necessary, from his viewpoint, social order (Yushchyk, 2016a). This theory interprets law as an attribute of social management in society, its methodological basis is dialectics. The concept of normative guarantees of human rights is connected with the rule-making activity of the state in the process of legal regulation of political relations in society. Also, the informational and analytical base of the research consists of scientific publications related to the research problem, constitutional and other legal acts.

Methodology

The methodological basis of this theoretical study is the dialectical method, which assumes the need to study such a concept as the guarantee of political rights in its various connections and development. Guarantees of citizens' political

rights and freedoms are studied through their connection with the legal norm and legal act, with the law-making activity of state authorities and decision-making by specialized courts as administrative justice bodies. The formal-logical method, based on the laws of formal logic, was used to clarify such concepts as "legal norm", "legal act", "guarantees of political rights", "administrative justice", etc. The systemic-structural method made it possible to consider the normative definition of guarantees of political rights in the context of social management of political relations, in particular, their legal regulation.

The study is based on the analysis of the guarantee of political rights and freedoms of Ukrainian citizens and their normative definition in national legislation, as well as the practice of solving public-law disputes by courts of administrative justice in Ukraine. However, it should be noted that the legal system of Ukraine reflects generally recognized international norms, provided, in particular, in the International Covenant on Civil and Political Rights and the European Convention on Human Rights guarantees of political rights and freedoms.

Results and discussion

The analysis of various definitions of the concept of law indicates that it is most often defined as a normative regulator of people's behavior. This definition, although it does not give a concrete idea about the specifics of law (since it can also be attributed to morality, religion, etc.), it is present in various definitions of law and does not cause doubts among theorists. And since the normative regulator of people's behavior is not only the law, then legal normativity is a special normativity in relation to normativity in general, which appears alongside other types of the latter (moral, religious, etc.). Therefore, normativity is a sign of a phenomenon of a higher order than law, morality, etc., which is common to them.

This phenomenon is *management*.

As an activity of meeting the needs of people, management is carried out in a way known to its subject and necessary, which in practice is formed into a usual course of action, acquires the meaning of a *rule* that is followed in similar situations. Some of these rules are identified by society as necessary rules, giving them the status of *norms*, which all must be considered and the relevant entities are obliged to be guided by. So, the concepts of management and law as a normative regulator of people's behavior have a common element of normativity. Law appears as an attribute of social management, as a specific legal normativity of the latter, its special way, different from morality, religion, etc. (Yushchyk, 2013).

The basis of the normativity of law is a legal norm. It should be noted that in modern legal science, the legal norm is studied by scientists in completely different aspects. Folloni (2017) builds a theory on the difference between texts and legal norms out of the complexity theory. It understands legal norms as emergent phenomena and interpretations as self-organizing processes in complex systems, which are formed of texts, theories, interpreters, values, worldviews, cases and other. Hashmi (2015) presents a methodology to extract legal norms from regulatory documents for their formalization based on the well-known IF ... THEN structure. Ferraro, Sakamoto, Okazaki, Mineshima & Satoh (2020) also investigates the issue of automatic methods of extracting and formalizing legal norms from legal documents. Caballero Elbersci (2023) analyses the metatheoretical question, regarding legal theories, about where in our reality are the norms, in general, and the legal norms, in particular. The author defends sociolinguistic pragmatism, i.e., that norms are primarily found in the sociolinguistic practices of a community. He defends a particular version of sociolinguistic pragmatism, i.e., that norms are found in the sociolinguistic, normative, historical, and rational practice of a community.
At the same time, in the scientific literature, a certain unity of views of theorists on the norm of law has developed, despite the diversity of the understanding of law itself. This unity is limited by the idea of it as a universally binding rule of conduct established by the state and ensured by state coercion, and by stating the three-element structure of the legal norm, which consists of a hypothesis, a disposition, and a sanction. The idea of a rule of law as the proper behavior established by a state act, as an "objective right" different from a "subjective right" acting as the implementation of a norm in a legal relationship, prevails.

This metaphysical idea of law and its norms is critically perceived from the standpoint of the dialectical theory of law. The most well-founded approach to the concept of a legal norm is a dialectical one, in which "proper" and "essential" do not oppose each other (the first in the form of a norm, "rules of conduct", and the second in the form of "actual" behavior based on a norm), and both "proper" and "essential" is legal norm,

moments of legal norm in their contradictory unity. In this case, the legal norm is a process of necessity, in which hypothesis, disposition, and sanction appear as moments of this process, therefore, as necessary moments of the norm, and not as random, externally fixed elements of the "structure" of the latter. Consideration of the norm of law as a process of necessity, firstly, does not deny the traditional understanding of the *hypothesis* of the norm as a condition; secondly, it clearly implies the interpretation of the *disposition* as a subject of a legal norm, which is the relation of the subject's right with the corresponding legal obligation (as a "proper" and "essential" relationship together); thirdly, the *sanction* of a legal norm is unambiguously interpreted - as a specific activity, the content of which is determined by the need to make the subject of the norm (disposition) *valid* under the conditions defined by the hypothesis of the norm (Yushchyk, 2013). The sanction in this sense is not limited to the application of measures of responsibility for the violation of rights and obligations, as is usually believed, but includes all activities of the subjects of legal relations, which ensure the unity of "proper" and "essential" in the norm, that is, the proper implementation of legal relations, - from legislative measures and the creation of regulatory conditions for such implementation to the execution of court decisions.

At the same time, a legal norm (as a partial case of a norm in general) exists only in the abstract, concretized in the form of *legal acts* (Yushchyk, 2013). The latter, in fact, make up a set of management decisions, which fill the content of each separate legal norm (hypothesis, disposition and sanction of the norm) at the general, special and individual levels. The content of legal acts is management information directly related to the normative definition of legal facts, rights and obligations of subjects of legal relations, as well as acts of activity that ensure the proper implementation of rights and obligations by subjects of legal relations, which is defined as legal information. Legal information is such management social information that is embodied in specific management decisions - legal norms; the latter are a process of necessity and expressed in legal acts. Therefore, legal information determines the content of the legal norm, which is formalized in legal acts. In particular, Miranda & Miranda (2017) examine such sources of legal information as legislation, jurisprudence and doctrine, as well as highlighting the speed with which they renew themselves, making the information, still recent, outdated.

A legal norm arises from the rules of communication between subjects (matter of law) as a law of their behavior, and is sanctioned by a powerful authority as a positive law. That is, a legal norm is the unity of the self-management activity of individuals and the sanctioning activity of a powerful subject (the unity of the objective and subjective in the norm). This determines the dual nature of the law-making process in which the content and form of the law is determined. Acquiring the normative form of hypothesis and disposition by the rule of communication takes place through law-making activity, that is, the sanctioning activity of the authority subject and the lawful activity of the subjects of communication. The hypothesis and disposition of the norm are "permeated" by this activity as a sanction, and these three moments form the norm as a necessary reality. That is why the method of implementing a legal norm is activity, that is, voluntary acts of communication subjects, and voluntary acts of a powerful subject, that is, all together as legal acts (Triada, 2022).

Public authorities make their management decisions in the form of legal acts. Traditionally, in jurisprudence, a legal act is defined as an official legally binding written document containing the will (decision) of an authorized subject within its competence, and aimed at regulating social relations. The concept of a legal act is a generic concept; among legal (juridical) acts, depending on the specific features (on the basis of normativity), normative legal acts, acts of application of legal norms (law enforcement, individual, non-normative) and acts of interpretation of legal norms (interpretive) are distinguished (Derhilova, 2016; Holovchenko, 2014). At the same time, the dialectical theory of law justifies the falsity of the statement that legal acts differ according to the criterion of their normative nature. All legal acts have a single normative nature, which, however, is expressed in them in different ways: in some acts, the norm is embodied as something common, as a mandatory rule (normative, "normative-legal" acts), and in others - as a separate, single, through which this universal is revealed (normorealizing, "individual-legal" acts) (Yushchyk, 2013).

Political rights and their guarantees are defined by laws as normative legal acts of the highest legal force. In particular, in accordance with Clause 1, Part 1, Article 92 of the Constitution of Ukraine, rights and freedoms of man and citizen, guarantees of these rights and freedoms; the main responsibilities of a citizen are determined exclusively by the laws of Ukraine. According to

Clause 22, Part 1, Article 92 of the Constitution of Ukraine, the principles of civil liability are determined exclusively by the laws of Ukraine; actions that are crimes, administrative or disciplinary offenses, and responsibility for them (Constitution of Ukraine, 1996). Thus, the disposition and sanction of legal norms, i.e. the rights and obligations of the subjects of legal relations, as well as legal responsibility, at the general level should always be contained in normative legal acts of the highest and highest legal force, i.e. in the Constitution of Ukraine and the laws of Ukraine.

Regarding the sanction of a legal norm, from the point of view of the dialectical theory of law, the usual definition of a sanction as "an element of the structure of a legal norm that indicates what adverse consequences (measures of state influence) may occur in the event of non-fulfillment (violation) of the rule of disposition of a legal norm" contains a contradiction. Defining the sanction of a legal norm as a dual internally contradictory (positive and negative) activity is extremely important for understanding law in general and, especially, positive law, "objective law", etc. (Triada, 2022). It should be noted that the issue of positive and negative sanctions is the subject of scientific discussion today. In particular, Lewinsohn-Zamir, Zamir & Katz (2022) write that the threat of sanctions is often insufficient to ensure compliance with legal norms. Recently, much attention has been given to nudges as a means of influencing behaviour without sanctions, but nudges are often ineffective and controversial. Therefore, *guarantees of political rights*, such as the activity of subjects of public authority, which is aimed at ensuring real opportunities for the realization of political rights of citizens, should be determined within the scope of *the sanction of the legal norm*.

The current legislation of Ukraine does not define such terms as "guarantees of human rights" and "legal guarantees of rights", and in the legal literature approaches to these concepts and their classifications differ significantly. The most successful definition of the concept of guarantees of rights and freedoms, Teptyuk (2018) points out, is the following: "Guarantees of the rights and freedoms of a person and a citizen are acts or acts stipulated by the law, which are determined by the legal status of the individual, and which the subjects of the guarantees are obliged to perform or refrain from them in order to preserve the existing rights and freedoms and ensure the concrete possibility of their implementation by the subjects of these rights and freedom". This author considers it necessary to classify the guarantees of human rights, first of all *on the basis of the subject of guaranteeing* the rights and freedoms of a person and a citizen; these subjects are: 1) the state; 2) non-governmental organizations and institutions (trade unions, other associations, etc.); 3) international organizations.

A special place in the system of guarantees, notes Korniienko-Zienkova (2019), belongs to *legal guarantees*, which ensure various stages of the process of implementation, protection and protection of the rights and freedoms of citizens. Therefore, the system of guarantees of citizens' rights is ultimately realized exclusively through legal guarantees, norms of a law-making nature, which directly ensure the real legal status of an individual. The most important legal guarantee of the constitutional rights and freedoms of a person is the proper implementation of the duties defined by law, corresponding to these rights, by all individuals and legal entities without exception, and especially public authorities, officials and employees of these bodies, compliance with the regime of legality in their activities. At the same time, not the obligation itself is a guarantee of the corresponding right, but its proper fulfillment by the obliged subject, which is ensured by a system of legal and other guarantees. Guarantees ensure the right of a person indirectly, through an obligation. Thus, legal guarantees of rights are actions or acts provided for by law, which are required to be carried out by state authorities, local self-government bodies, and their officials in order to preserve the existing rights and freedoms of a person and a citizen and ensure the real possibility of their implementation by the subjects of these rights and freedoms (Teptyuk, 2018).

In order to understand the legal guarantees of political rights, it is necessary to define in the current legislation the content and scope of specifically political rights of citizens and the mechanism of realization of these rights. Legal guarantees of political rights should be considered through the prism of the constitutional consolidation of the latter, Articles 22 (inexhaustibility of rights, guarantee of rights, impossibility of their cancellation) and 92 (determination of rights, freedoms, guarantees, obligations exclusively by laws) of the Constitution of Ukraine (Constitution of Ukraine, 1996).

The most effective and efficient legal guarantee of political rights and freedoms, in our opinion,

is their judicial protection. "Judicial protection is a law enforcement guarantee of the rights and freedoms of a person and a citizen, which is the main means of ensuring the real possibility of exercising these rights and freedoms by subjects" (Teptyuk, 2018). The peculiarity of such a legal guarantee as the judicial protection of human rights and freedoms, according to Slobodianiuk (2019), is that the state, through the norms of the law, requires from the judicial authorities such legal actions and acts that ensure the proper fulfillment of the legal obligation by the state (the court) to protect the right of a specific person in the relevant legal relationship, and guarantee the fulfillment of the duty of everyone who is obliged to satisfy the right protected by the court. Therefore, judicial protection of the violated right or freedom of a person is the main state guarantee of compliance and protection, including the political rights and freedoms of citizens, which include: the right to apply to authorities with petitions, the right to participate in the management of state affairs, the right to elect and be elected, the right of equal access to public service, the right to peaceful assembly, the right to form political parties and public organizations, etc. (Korniienko-Zienkova, 2019).

At the same time, the literature notes the need to ensure *the execution of court decisions* - as a guarantee of protecting the rights of citizens. On the other hand, courts in Ukraine do not have effective means of monitoring the execution of their decisions. It is worth supporting the opinion of some authors regarding the strengthening of state guarantees for the protection of the rights and freedoms of citizens in the execution of court decisions (Lytvyn et al., 2022).

Given the *public-law character* of political rights and freedoms, in our opinion, judicial protection of these rights and freedoms should be carried out by specialized courts, as bodies of administrative justice. The concept of "administrative justice" has not received a certain common point of view in modern science. In particular, Tykhomyrov & Husariev (2009) identify three main approaches to understanding administrative justice: procedural, according to which administrative justice is defined as a special procedure for resolving disputes or as a type of court proceedings; institutional, in which administrative justice is characterized as a system of specialized courts; functional, where the emphasis is on the implementation by the state of the function of protecting the rights and freedoms of citizens. Instead, Kolomoiets (2008) came to the conclusion that two main approaches to the understanding of this concept have been formed: 1) a narrow approach, according to which administrative justice is considered as judicial protection (administrative justice); 2) a broad approach, which includes the resolution of administrative-legal disputes by judicial bodies (administrative proceedings), as well as by other authorized state bodies (appeals of management acts in an administrative procedure). In our opinion, a "broad" approach is more productive in the scientific sense, according to which the concept of justice is not limited to the judicial authorities of the state, but also includes bodies (prosecutor's office, bodies and institutions for the execution of criminal punishments, etc.), the activities of which in one way or another are aimed at preventing, detecting and eliminating violations of the law to ensure the proper implementation of human rights and freedoms, the establishment of legality and justice, as well as those bodies and institutes related to their activities (advocate, notary, etc.).

To define the general concept of justice, and with it, administrative justice, it is necessary to take legal activity as a basis, considering it as a separate type of social activity, the content of which is the implementation by the state apparatus of legislative, administrative and law enforcement functions, that is, the legal formalization of state management of society. Implementation of state administration "is associated with a legal form, which is a valid form of activity of the state apparatus. The state functions as a real public authority only in its legal form; covered by a legal form, it forms a certain unity, which, as a substance, carries within itself the authoritative power of the state (Yushchyk, 2004). "The administrative activity of the state apparatus is implemented only in the unity of the legislative, administrative and law enforcement functions of the state apparatus, which are necessary aspects of the legal form of this activity...". Such "purposeful activity of the state apparatus, the content of which is the powerful resolution of conflicts between legal and illegal interests, which acts as denial of offenses and establishment of legal order, is *a law-enforcement function* of the state" (Yushchyk, 1997).

If you combine this definition of the law enforcement function of the state and the concept of justice, then their essential connection is noticeable. The law enforcement function is represented by the administration of justice by a judge, execution of decisions by a court (state) executor, supervising the investigation of criminal cases by the prosecutor, investigation of these cases by investigators, etc.; these activities

relate to law enforcement activities as a part of the whole; the set of these functions forms the law enforcement function of the state (Yushchyk, 1997). So, justice refers to the activity of the state related to the elimination of violations of law, as opposed to the formation and implementation of law. The limits of justice are determined by the limits of the law enforcement function, the content of which is the activity of all bodies and officials of the state, to bring all acts of subjects of legal relations into compliance with the law. Justice is a special sphere (branch) of state administration, in which, based on the principle of legality, the law enforcement function of the state is implemented in the activities of public authorities and their specialized institutions.

Administrative justice, as a type of justice, deals with the violation of rights and freedoms, guarantees in the public-legal sphere, and its subject is public-law disputes, one of the parties of which is always a public-authority body of state power. The main purpose of administrative justice is to restore the violated right, and its task is to protect the rights and freedoms of a person and a citizen from violations by public authorities by resolving conflicts between them (Kaplia, 2017). In our opinion, all violations related to the political rights of subjects should be determined as the subject of administrative justice. Therefore, the normative definition of the guarantees of political rights of citizens should be aimed at a clear understanding of both the nature of these rights and the concept of justice and, especially, administrative justice. The latter is a decisive link in the implementation of the constitutional responsibility of the state to the person for its activities, for the approval and guarantee of the rights and freedoms of the person and the citizen.

Conclusions

The following conclusions can be formulated as a result of this research:

1) the concept of human and citizen rights and freedoms, including political rights and freedoms, as well as their guarantees, depends on the chosen approach to the understanding of law in general, and therefore, the understanding of the concept of legal norms and legal acts;
2) the most convincing, according to the authors, is the definition of the specified concepts in the context of the dialectical theory of law, with the use of dialectical methodology and systematic analysis of legal reality;
3) the normativity of law is determined by the fact that it is an attribute of social management, which has a normative nature and is implemented through legal norms, which are embodied in legal acts of the subjects of norm-making and implementation of norms;
4) guarantees of political rights and freedoms of citizens are determined by normative legal acts of positive law (constitutional acts, laws and by-laws), as well as by legal acts of the application of the law, that is, court decisions with the actual implementation of these decisions;
5) the public nature of political rights and freedoms determines the need to guarantee them in acts of administrative justice, as one of the types of justice in general. Therefore, the normative definition of these guarantees is an urgent task in the context of the main constitutional duty of the state, namely, affirming and ensuring human rights and freedoms.

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