

UDC 349.2

DOI <https://doi.org/10.32849/2663-5313/2022.4.15>**Oleksii Drozd,***Head of the Department of Doctoral and Post-Graduate Studies,**National Academy of Internal Affairs,**Doctor of Law, Professor,**1 Solomianska Square, Kyiv, Ukraine, 03035***ORCID:** 0000-0002-4514-6594*alex0674682444@gmail.com*

Drozd, Oleksii (2022). Social guarantees for personnel of the state service of special communications and information protection of Ukraine: practical implementation. *Entrepreneurship, Economy and Law*, 4, 95–99, doi: <https://doi.org/10.32849/2663-5313/2022.4.15>

## SOCIAL GUARANTEES FOR PERSONNEL OF THE STATE SERVICE OF SPECIAL COMMUNICATIONS AND INFORMATION PROTECTION OF UKRAINE: PRACTICAL IMPLEMENTATION

**Abstract. Purpose.** The purpose of the article is to study the issue of the practice of social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine.

**Results.** The author characterises one of the most important concepts of law related to social guarantees of persons and citizens employed in state authorities. The variety of options for a certain legal status, which determines the nature and content of the legal relationship between the employer and the employee, makes the ways and methods of social security of the corresponding category of persons multivariate. In current context, it should be noted that guaranteeing, including the social security of the personnel of the State Service of Special Communications and Information Protection of Ukraine, is a priority and the most important, essential in recognising the high level of democracy and sustainability of the processes of proper compliance and ensuring the rights and freedoms of man and a citizen. It is proved that the social guarantees for the personnel of the State Service of Special Communication and Information Protection of Ukraine are prominent among the provisions of the legislation of Ukraine and are duly provided therein. However, the author argues that the set of norms and provisions of the legislation of Ukraine regarding their practical implementation is ambiguous, and in modern conditions it especially needs a comprehensive scientific and theoretical analysis and improvement, contributing to strengthening the legal status of these persons in general. **Conclusions.** The author determines the need to further strengthen the basic elements of the mechanism for guaranteeing rights and freedoms of man and of the citizen of social orientation by supplementing Ukrainian laws and by-laws with elements that simplify access to the relevant social benefits. An important issue is also the need to codify the guarantees of social rights and freedoms of the personnel of state authorities according to the criteria of the form of employment: whether it is a public service, or a military service, although this aspect of practical implementation of the above-mentioned is rather controversial. Further research based on the key areas formulated by the author in the conclusions to the article is proposed to be focused on a more thorough analysis of the main problematic issues of law application of provisions that have a social-guarantee content, and the use of relevant materials in the drafting of provisions and laws, making relevant proposals to the lawmakers.

**Key words:** social guarantees, State Service of Special Communications and Information Protection, rights and freedoms, implementation, social rights, law application.

### 1. Introduction

Rights and freedoms of man and of the citizen are the main guidelines for making public policy, in particular legislative one. Rights and freedoms of man and of the citizen are ensured by means of their guarantee, since it is the concept of guarantee that enables to use

them in everyday life by all relevant actors. Therefore, the practice of law application of the relevant provisions and the mechanism noted above are important for the general functioning of the corresponding coordinate system.

From this perspective, the importance of adaptation to modern practice of law appli-

cation and bringing into line the provisions of Ukrainian legislation, which provide the possibility of access of a particular circle of citizens to social rights granted to them and their guarantees, and in view of the complicated geopolitical situation and the important role and place of the State Service of Special Communications and Information Protection of Ukraine, scientific development of key problems is critical.

Moreover, in the context of the relevancy outlining, it is important that the competence of the service is to ensure cyber security in Ukraine, to control the protection of information, defined by the legislation of Ukraine as such that requires it, to ensure the functioning of the special communication system (Law of Ukraine On the State Service of Special Communications and Information Protection of Ukraine, 2006). It should be noted that the issues related to the legal application are dynamic in their content, that is why they never lose scientific relevance and novelty and require systemic research. This allows to form a perspective on the need to clarify the mechanism for the legal implementation of the above theoretical constructions.

The purpose of the article is to study the issue of the practice of social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine, which, in our opinion, requires solving a number of research tasks, such as: 1) to provide theoretical and legal characteristics of the concept and content of social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine; 2) to clarify the general procedure and structure of the mechanism of law application and implementation of theoretical and regulatory mechanisms for guarantee; 3) to identify a number of problematic issues on the basis of the analysed materials and to suggest ways of their possible solution.

The object of the article is social relations in the sphere of guaranteeing rights and freedoms of man and of the citizen to employees (officials) of the state authorities of Ukraine.

The subject matter of the study is the mechanism for ensuring in practice social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine.

## **2. Social and legal security of military personnel**

The mechanism for social guarantee and ways of its legal application are systematically studied by scientists and practitioners, since it directly affects the level of ensuring rights and freedoms of man and of the citizen. However, the characteristic of any theoretical

and legal concept, which has a comprehensive character, should be started with interpretation of individual definitions and concepts that characterise the corresponding process fragmentarily.

For example, V. Palamarchuk argues that social guarantees are the monetary equivalent of the natural consumption of market and public goods, guaranteed by the state to citizens in view of their social expectations and economic opportunities. This allows the population to fully satisfy social interests and thus achieve the proper level of social security in the country. Some scientists generally define social security policy through the creation of a system of social guarantees (Palamarchuk, 1996). According to the Constitution, several types of social security are defined, as follows: mandatory social insurance, establishment of a network of institutions of caring for disabled persons; conditions, created by the state, enabling every citizen to build, purchase, or rent housing; state financing of health protection, medical care and medical insurance, etc. (Tatsii, 2011).

Moreover, the basic categories, provided in the text of the Constitution, are embodied in the sectoral legislation of Ukraine and are fragmented in a number of social and legal processes, contributing to the launch of listed algorithms for implementing theoretical opportunities for social benefits.

However, it should be noted that the issues related to the legal application of social benefits of both military and other employed persons in the state authorities, for example, the State Service of Special Communications and Information Protection of Ukraine, are ambiguous, since they imply intertwined norms and provisions concerning public officials, as well as those provisions of laws and by-laws that have legal force in relation to military personnel.

According to S. Sytniakivska, social and legal protection of military personnel is the activity of the state aimed at establishing a system of legal and social guarantees that ensure constitutional rights and freedoms, meet material and spiritual needs of military personnel in accordance with their specific type of service, status in society, support of social stability in military environment (Sytniakivska, Khlyvniuk, 2014).

In addition, scientists often classify the concept of social security, in accordance with the legislation of Ukraine, by the purpose of its individual areas into those aimed at increasing the social security of current military personnel, in view of what responsible position they occupy, and those aimed at covering the basic expenses, in particular treatment in case of complete, partial or temporary loss

of working capacity, as well as in other cases provided by law.

In his studies, D. Makovskyi argues that the personnel of the State Service of Special Communications and Information Protection of Ukraine are also subject to social guarantees, considering the fact that the relevant persons, according to the regular schedule and positions occupied, are directly military personnel (Makovskyi, 2021). Due to right of the personnel of the State Service of Special Communications and Information Protection of Ukraine to several types of social guarantees, which, first of all, are aimed at granting access to social benefits on the principle of institutional affiliation of these persons to the specified service (the key is the fact that they are in labour relations with it), the number of problematic issues of their realisation increases, since, in our opinion, the provision of social rights is influenced by the relevant guarantees scattered in the legal regulations of Ukraine.

### **3. The regulatory and legal framework for social and legal security of military personnel of the State Service of Special Communications and Information Protection**

The social and legal security of military personnel of the State Service of Special Communications and Information Protection of Ukraine and members of their families is provided in accordance with the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" (Law of Ukraine On Social and Legal Protection of Servicemen and Members of Their Families, 1991). According to this Law, the procedure for the exercise of the right of servicemen to rest, the procedure for basic and additional holidays, providing free medical care and sanatorium treatment and rest, as well as the procedure for provision of residential premises are also defined. The law has repeatedly amended the guarantees of the rights and freedoms of military personnel, including prevention of the abolition or narrowing of their content and scope in the process of adopting new laws or amending existing ones (Makovskyi, 2021). Furthermore, it is noted that this service creates educational, medical, sanatorium-resort and other establishments, research and production establishments. The State Service's management covers state enterprises activities thereof are related to ensuring the fulfilment of the tasks assigned to it (Law of Ukraine On the State Service of Special Communications and Information Protection of Ukraine., 2006). Therefore, the corresponding regulation of the legislation of Ukraine forms the general structure of not only guaranteeing social rights and freedoms of its employees, but also a special and personified cycle

of their implementation, since medical services, sanatorium-resort treatment and other types of social security, connected with medicine, have a special "departmental" character, which mainly positively affects these legal relations.

Scientists and researchers argue that a number of legal regulations of Ukrainian law are directly contradictory with others, excluding provisions related to social and legal provision of military personnel and members of their families (Law of Ukraine On Preventing a Financial Disaster and Creating Prerequisites for Economic Growth in Ukraine, 2014). However, it should be noted that such changes are legally ineffective, since, according to the Constitution, it is determined that the changes made to the legislation of Ukraine cannot reduce the real rights and freedoms of man and of the citizen, their volume. In addition, a positive element of the structure of social guarantee in this respect is Decision 6-rp/2007 by the Constitutional Court of Ukraine of July 9, 2007, according to which it is determined that social guarantees have direct relationship with the relevant constitutional law and cover all persons and citizens in Ukraine, without exception, who have such opportunities in accordance with the legislation of Ukraine (Decision of the Constitutional Court of Ukraine, 2007).

Scientist L. Medvid also emphasises the above-mentioned and proves that the current rights and freedoms of military personnel (namely, such legal status in our understanding has the personnel of the State Service of Special Communications and Information Protection of Ukraine) cannot be restricted by any decisions, since their presence, stability of the functioning and constancy of statement ensure sustainability of the state's defence capacity and is directly linked to the stable activities of the entire security and defence sector of Ukraine (Medvid, 2016).

### **4. Conclusions**

Thus, relying on the perspectives and opinions of researchers and scientists, norms and provisions of the legislation of Ukraine (provided for both in the Constitution and in by-laws), as well as outlined basic problems related to rights and freedoms of man and of the citizen, the author advocates the perspective on the need to further strengthen the basic elements of the mechanism for guaranteeing rights and freedoms of man and of the citizen of social orientation by supplementing Ukrainian laws and by-laws with elements that simplify access to the relevant social benefits. An important issue is also the need to codify the guarantees of social rights and freedoms of the personnel of state authorities according to the criteria of the form of employment: whether it is a public service, or

a military service, although this aspect of practical implementation of the above-mentioned is rather controversial.

Further research should focus on the need for deep development of all regulations of Ukrainian

legislation, which have legal force and contain elements of the mechanism for social guarantee in order to form a unified idea about it, and on the basis of the above mentioned, the submission of proposals on the possible ways of optimisation.

#### References:

Makovskiy, D.V. (2021). Do pytannia sotsialnykh harantii osobovoho skladu Derzhavnoi sluzhby spetsialnoho zviazku ta zakhystu informatsii Ukrainy [On the issue of social guarantees for the personnel of the State Service for Special Communications and Information Protection of Ukraine]. *Prykarpatskyi yurydychnyi visnyk - Carpathian Legal Bulletin*, 5(40), 66-69 (in Ukrainian).

Medvid, L.P. (2016). Prava, svobody ta oboviazky viiskovosluzhbovtiv v Ukraini: konstytutsiino-pravovi aspekty [Rights, freedoms and duties of military personnel in Ukraine: constitutional and legal aspects]. *Extended abstract of candidate's thesis*. Kyiv (in Ukrainian).

Palamarchuk, V.M. (1996). Ekonomichni peretvorennia i sotsialna bezpeka [Economic transformations and social security]. Kyiv: NISD (in Ukrainian).

Rishennia Konstytutsiynoho Sudu Ukrainy vid 9 lypnia 2007 r. № 6-рп/2007 u spravi shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) polozhen st. 29, 36, chastyny druhoi st. 56, chastyny druhoi st. 62, chastyny pershoi st. 66, punktiv 7, 9, 12, 13, 14, 23, 29, 30, 39, 41, 43, 44, 45, 46 st. 71, st. 98, 101, 103, 111 Zakonu Ukrainy «Pro Derzhavnyi biudzheth Ukrainy na 2007 rik» za konstytutsiinym podanniam 46 narodnykh deputativ Ukrainy (sprava pro sotsialni harantii hromadian) [Decision of the Constitutional Court of Ukraine dated July 9, 2007 No. 6-рп/2007 in the case regarding compliance with the Constitution of Ukraine (constitutionality) of the provisions of Art. 29, 36, parts of the second article. 56, part of the second article 62, part one of Art. 66, items 7, 9, 12, 13, 14, 23, 29, 30, 39, 41, 43, 44, 45, 46 of Art. 71, Article 98, 101, 103, 111 of the Law of Ukraine "On the State Budget of Ukraine for 2007" according to the constitutional submission of 46 People's Deputies of Ukraine (case on social guarantees of citizens)]. (2007). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/v0a6p710-07#Text> (in Ukrainian).

Sytniakivska, S.M., Khlyvniuk, M.H. (2014). Entsyklopediia prav liudyny: sotsialno-pedahohichnyi aspekt [Encyclopedia of human rights: socio-pedagogical aspect]. Kharkiv (in Ukrainian).

Tatsii, V.Ia. (2011). Konstytutsiia Ukrainy: naukovo-praktychnyi komentar [The Constitution of Ukraine: a scientific and practical commentary]. Kharkiv: Pravo (in Ukrainian).

Zakon Ukrainy Pro Derzhavnu sluzhbu spetsialnoho zviazku ta zakhystu informatsii Ukrainy : vid 23 liutoho 2006 roku № 3475-IV [Law of Ukraine On the State Service of Special Communications and Information Protection of Ukraine: dated February 23, 2006 No. 3475-IV]. (2006). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/3475-15#Text> (in Ukrainian).

Zakon Ukrainy Pro sotsialnyi i pravovyi zakhyst viiskovosluzhbovtiv ta chleniv yikh simei : vid 20 hrudnia 1991 roku № 2011-XII [Law of Ukraine On Social and Legal Protection of Servicemen and Members of Their Families: dated December 20, 1991 No. 2011-XII]. (1991). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/2011-12#Text> (in Ukrainian).

Zakon Ukrainy Pro zapobihannia finansovoi katastrofy ta stvorennia peredumov dlia ekonomichnoho zrostantia v Ukraini : vid 27 bereznia 2014 roku № 1166-VII [Law of Ukraine On Preventing a Financial Disaster and Creating Prerequisites for Economic Growth in Ukraine: dated March 27, 2014 No. 1166-VII]. *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1166-18#Text> (in Ukrainian).

#### Олексій Дрозд,

начальник відділу докторантури та ад'юнктури

Національної академії внутрішніх справ,

доктор юридичних наук, професор

Солом'янська площа, 1, Київ, 03035

ORCID: 0000-0002-4514-6594

alex0674682444@gmail.com

### СОЦІАЛЬНІ ГАРАНТІЇ ОСОБОВОГО СКЛАДУ ДЕРЖАВНОЇ СЛУЖБИ СПЕЦІАЛЬНОГО ЗВ'ЯЗКУ ТА ЗАХИСТУ ІНФОРМАЦІЇ УКРАЇНИ: ДО ПИТАННЯ ПРАКТИЧНОГО ЗАБЕЗПЕЧЕННЯ

**Анотація.** Метою статті є опрацювання питання практичного забезпечення соціальних гарантій особового складу Державної служби спеціального зв'язку та захисту інформації України. **Results.** Автор схарактеризував один із найважливіших інститутів права, що пов'язані з соціальними гарантіями осіб і громадян працевлаштованих до органів державної влади. Розмаїття варіантів перебу-

вання в певному правовому статусі, що визначає характер і зміст правовідносин між роботодавцем і працівником, поліваріатизує шляхи й способи соціального забезпечення відповідної категорії осіб. В умовах сьогодення слід зазначити, що гарантування, зокрема й соціального забезпечення особового складу Державної служби спеціального зв'язку та захисту інформації України, є пріоритетним і найбільш важливим, таким, що має вагоме значення у визнанні високого рівня демократичності й сталості процесів належного дотримання та створення умов щодо забезпечення прав і свобод людини і громадянина. Доведено позицію, що соціальні гарантії особового складу Державної служби спеціального зв'язку та захисту інформації України посідають чільне місце серед норм законодавства України та належним чином у ньому зазначені. Водночас автор зауважує, що комплекс норм і положень законодавства України щодо практичної їх реалізації є неоднозначним, а в сучасних умовах особливо потребує комплексного науково-теоретичного аналізу та вдосконалення, що зі свого боку призведе до підсилення правового статусу відповідних осіб загалом. **Conclusions.** Визначена необхідність подальшого укріплення основних елементів механізму реалізації гарантованих прав і свобод людини і громадянина соціального спрямування шляхом доповнення Законів України та підзаконних нормативно-правових актів елементами, що спрощують доступ до відповідних соціальних благ. Важливим питанням також постає потреба в кодифікації гарантій соціальних прав і свобод особового складу органів державної влади за критерієм форми працевлаштування: чи це державна служба, чи проходження військової служби, хоча цей аспект практичної реалізації зазначеного наразі доволі дискусійний. Подальші наукові пошуки на підставі тих ключових напрямів, що сформулював автор у висновках до статті, пропонується спрямувати в контексті більш ґрунтовного аналізу основних проблемних питань правозастосування норм, що мають соціально-гарантувальний зміст, і використанні відповідних матеріалів у нормо- та законопроектуванні, винесення відповідних пропозицій відповідним суб'єктам законодавчої ініціативи.

**Ключові слова:** соціальні гарантії, держспецзв'язок, права і свободи, реалізація, соціальні права, правозастосування.