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GUARANTEES OF RIGHTS OF PARTICIPANTS IN ADMINISTRATIVE AND LEGAL RELATIONS IN THE FIELD OF MAKING PUBLIC POLICY ON ECONOMIC SECURITY OF THE STATE

Abstract. Purpose. The purpose of the article is to define the legal nature and essence of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State. **Results.** The article defines the essence of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State. The study analyses concepts such as: 'guarantee', 'legal guarantees'. The guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State are classified and the essence of each of them is determined. It is noted that the features of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State are: the regulatory and legal framework; special legal means; the procedure and conditions for the implementation of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State, which are prescribed at the legislative level; protection in case of violation of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State. **Conclusions.** It is concluded that the features of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State are: 1) the regulatory and legal framework; 2) special legal means; 3) the procedure and conditions for the implementation of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State, which are prescribed at the legislative level; 4) protection in case of violation of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State; 5) legal and economic instruments for the protection and defence of the rights of participants in the relevant relations; 6) a binding nature; 7) the purpose of introducing the latter is a balance between economic profit and public interest in a particular sector of the economy; 8) they are a separate element of the administrative and legal mechanism for ensuring economic security; 9) depending on the threats to economic security, the latter tend to protect the public interest in a particular sector of the economy, etc.

Key words: guarantees, rights, guarantees of rights, administrative and legal relations, making public policy on economic security of the State, economic security.

1. Introduction

In modern conditions, guarantees of the rights and freedoms of participants in administrative and legal relations is of particular importance and is an urgent problem for both Ukraine and many foreign countries. Today, the degree of security of rights of participants in administrative and legal relations in various sectors is a significant indicator of the level of development achieved by society

and the state. For each participant in administrative and legal relations to enjoy subjective rights in Ukraine, effective mechanisms should be determined to ensure the possibility of implementing the latter in modern economic transformations. Therefore, it can be argued that each sector of making public policy, in particular on economic security of the State, should have an effective mechanism for ensuring administrative and legal relations functioning in this sec-

tor, which in turn includes certain guarantees for participants. As it is known, guarantees are aimed at supporting the continuous development of administrative and legal relations in the field of making public policy, in particular on economic security of the State, therefore, their definition is one of the mandatory components of the latter.

The study of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State generally or fragmentarily within the broader issue has been under focus by domestic scientists such as: V.B. Averianov, O.F. Andriiko, O.M. Bandurka, O.M. Bondarevskaya, O.V. Dzhafarova, O. V. Komienin, D.O. Koshykov, S.I. Lekar, V.I. Melnyk, K. R. Padalko, O.M. Riezniak, T.V. Tsvihun, and others.

The purpose of the article is to define the legal nature and essence of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State.

2. Features of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State

We propose to start a direct characterisation of the guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State with the characterisation of a category 'guarantee'.

In scientific work by O. V. Boiko, 'guarantee' (French 'garantie' – to ensure) is interpreted as a 'pledge', 'condition that ensures something'. Moreover, the author notes that the legal literature review reveals that the guarantees of rights and freedoms can be understood as: a) a set of subjective and objective factors; b) a system of socio-economic, political, moral, legal and organisational prerequisites, conditions, means and methods. We believe that the latter definition does not quite reveal the meaning of the concept of guarantees but lists their types. A more accurate definition seems to be 'conditions, means and ways' that ensure the realisation and comprehensive protection of rights (Boiko, 2020, pp. 25).

The *New explanatory dictionary of the Ukrainian language* defines 'guarantee' as 'provision or creation of material means; protection of someone, something from danger; guarantee of something' (Yaremenko, 2000, p. 42). Instead, the *Great explanatory dictionary of the modern Ukrainian language* defines the word 'guarantee' as 'a pledge of fulfilment of obligations, exercise of rights' (Busel, 2002, p. 173).

In the course of considering scientific interpretations on the understanding of this category, we note that O.V. Dzhafarova's scientific perspective is of interest that the State establishes guarantees through obligations necessary to ensure that the latter (at the level of provisions) do not turn into obstacles to enjoying human rights and freedoms (at the level of their implementation), so that they do not turn from a legal means into socially harmful and illegal (Dzhafarova, 2015, p. 30).

A. V. Ponomarenko suggests considering legal guarantees as a set of conditions, ways and means reflected in legal regulations, which determine the procedure for the realisation, enjoyment of human rights and freedoms, as well as their protection, defence and restoration in case of violation (Ponomarenko, 2013, p. 39).

According to E.V. Bilozorov, guarantees are a number of specific means, thanks to which the effective exercise by citizens of their rights and freedoms, their protection and defence against offenses becomes real. According to the scientist, their main purpose is to provide everyone with equal legal opportunities for the acquisition, implementation, protection and defence of subjective rights and freedoms (Bilozorov, 2009, p. 27). Furthermore, guarantees are a system of means that facilitate the realisation of rights and freedoms, interests and duties covered by law (Averianov, 2002, p. 160).

Interesting is the definition of M. M. Voinarivskyi, who argues that guarantees are: 'in the narrow sense, the fundamental provisions of objective law that ensure the implementation, protection, defence and restoration of subjective rights and legitimate interests of parties to legal relations; in the broad sense, elements of the legal system that ensure the systematic and consistent framework of objective law provisions in the relevant sources, their unambiguous interpretation and effective application' (Voinarivskyi, 2014).

It should be noted that in his scientific work, D. O. Koshykov describes legal guarantees, as follows: 1) It is a mandatory element, which forms a set of objects aimed at ensuring and protecting fundamental values – rights and freedoms; 2) They are always associated with a particular person and his/her legal status; 3) Their content may vary depending on the types of legal status of a person and the relations to which he/she becomes a party; 4) One of the aspects of the main purpose of guarantees is to ensure and protect human rights and freedoms, which is reflected in their protective and ensuring functions, and they also perform a preventive function; 5) In the mechanism for ensuring human rights and freedoms,

they become dynamic under certain factors, for example, encroachment or violation of rights and freedoms, until then they are statistical; 6) Guarantees should be legally enshrined in order to perform their functions, otherwise they lose their legal properties and cannot fully perform their own functions; 7) The functioning of guarantees does not require the existence or creation of any special legal conditions, as it is provided by the entire system of law' (Koshykov, 2021, pp. 293-294). In general, we agree with the opinion of the scientist, but we believe that it is unclear what the author means by 'a set of objects aimed at ensuring and protecting fundamental values – rights and freedoms', an element of which, according to him, guarantees are.

Given the scientific interpretations, we argue that guarantees are legally enshrined provisions that have their own characteristics and also perform the protective function of the rights of participants in administrative legal relations.

It should be noted that guarantees, as legally enshrined provisions, are contained in various legal regulations, which gives rise to their grouping or classification.

With regard to the classification of guarantees, it should be noted that in the scientific literature they are grouped into: general and special (Volynka, 2003, p. 202) or regulatory and organisational. General guarantees are argued considered to cover economic, political, ideological, social and other aspects. In turn, 'the essence of special guarantees is the means established by law to ensure the use, observance, enforcement and application of law provisions, aimed at ensuring the constitutional order, the rule of law, the Constitution and laws, the establishment of law and order, the protection of human and civil rights and freedoms, the exercise of democracy, state power and local self-government' (Bosyi, 2019, p. 81).

For example, in his study on the definition of administrative and legal guarantees for the realisation of the rights of road users, Ya. Lakuichuk notes that the system of administrative and legal guarantees for the protection of the rights of road users is divided into regulatory and organisational guarantees. In addition, such classification is relatively conditional, but it contributes to the understanding of the nature of the origin and essence of administrative and legal guarantees (Lakuichuk, 2021, p. 173).

3. The content of guarantees of rights of participants in administrative and legal relations in the field of making public policy on economic security of the State

With regard to the main issue of our study, we agree with the scientific perspective

of D. O. Koshykov that guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State are:

1) *Adoption of binding decisions (supreme state authorities, central executive bodies, local self-government bodies)*. Describing this guarantee requires to remind that actors of this guarantee are: the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the National Security and Defence Council of Ukraine, the National Bank of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Finance of Ukraine, the State Fiscal Service of Ukraine, the Security Service of Ukraine, etc. It should be noted that our study does not disclose guarantees for each actor separately, in view of this, we will continue further scientific analysis of the problem we have set. For example, according to Part 4 of Article 10 of the Law of Ukraine 'On the National Security and Defence Council of Ukraine', the decisions of the National Security and Defence Council of Ukraine, enacted by decrees of the President of Ukraine, are binding on the executive authorities (Law of Ukraine On the National Security and Defence Council of Ukraine, 1998);

2) *Independence in their professional activities and decision-making (courts, prosecutors, local self-government bodies)*. In accordance with Part 1, 2 of Article 71 of the Law of Ukraine 'On Local Self-Government in Ukraine', territorial communities, bodies and officials of local self-government independently exercise the powers granted to them. Executive authorities and their officials have no right to interfere with the lawful activities of local self-government bodies and officials, as well as to resolve issues referred by the Constitution of Ukraine, by this and other laws to the powers of local self-government bodies and officials, except in cases of powers delegated by the councils (Law of Ukraine on Local Self-Government in Ukraine, 1997). Moreover, according to Article 6 of the Law of Ukraine 'On the Judiciary and the Status of Judges', when administering justice, courts are independent from any illegal influence (Law of Ukraine on the Judiciary and the Status of Judges, 2016);

3) *Obtaining information related to the status of economic security in cases where no special regimes of its use or dissemination are established (local self-government bodies, public institutions)*. This guarantee is implemented in the provisions of Section IV of the Law of Ukraine 'On Access to Public Information';

4) *An appropriate level of logistics for the functioning of individual actors that make public policy on economic security of the State,*

systematic remuneration of officials of such entities and their social protection (higher state authorities, central executive authorities, local self-government bodies). This guarantee is implemented in Part 1 of Article 25 of the Law of Ukraine 'On Central Executive Bodies': financial and logistical support for the activities of ministries and other central executive bodies is provided at the expense of the State Budget of Ukraine. It should be noted that according to Article 16 of the Law of Ukraine 'On the Prosecutor's Office', the prosecutor's guarantees are the financing and organisational support for the prosecutor's office, as well as proper material, social and pension provision of the prosecutor, in the manner prescribed by law (Law of Ukraine On the Prosecutor's Office, 2014);

5) *Public examination of legal regulations, participation in their discussion, including during parliamentary hearings, submitting one's conclusions and proposals (civil society institutions).* This guarantee is implemented in the Procedure for promoting public examination of the activities of executive bodies (Resolution of the Cabinet of Ministers of Ukraine On approval of the Procedure for promoting public examination of the activities of executive bodies, 2008);

6) *The right to appeal to the Ukrainian Parliament Commissioner for Human Rights if the rights, freedoms and interests of the participants in these legal relations are violated by the actions of actors that ensure economic security of the State (civil society institutions).* This guarantee is implemented on the basis of the Laws of Ukraine 'On Citizens' Appeals' and 'On the Ukrainian Parliament Commissioner for Human Rights';

7) *The legal liability for encroachment on economic security of the State, when one of the participants in these legal relations by actions or inaction causes damage to the other (higher state authorities, central executive authorities, local self-government bodies, civil society institutions).* For example, according to Part 1 of Article 27 of the Law of Ukraine 'On Central Executive Bodies' officials of ministries and other central executive bodies are subject to criminal, administrative, disciplinary and civil liability in accordance with the law, as well as liability for violation of the requirements of the Law of Ukraine 'On Preventing Threats to National Security Associated With Excessive Influence by Persons Who Wield Significant Economic and Political Weight in Public Life (Oligarchs)' (Law of Ukraine On Central Bodies of Executive Power, 2011);

8) *The possibility to apply to the court in case of violation or probability of violation of their*

rights, freedoms and interests in the field of economic security of the State (higher state authorities, central executive authorities, local self-government bodies, public institutions). According to Part 4 of Article 71 of the Law of Ukraine 'On Local Self-Government in Ukraine', local self-government bodies and officials have the right to apply to the court to declare regulations of local executive authorities, other local self-government bodies, enterprises, institutions and organisations to be illegal because they restrict the rights of territorial communities, powers of local self-government bodies and officials (Law of Ukraine on Local Self-Government in Ukraine, 1997);

9) *Involvement in making economic policy of the state, preparation of strategically important legal regulations on economic security of the State, in particular the draft National Security Strategy of Ukraine (higher state authorities, central executive authorities, local self-government bodies, public institutions).* For example, with regard to public associations, it should be noted that the law provides for a guarantee to participate, in the manner prescribed by law, in the development of draft regulatory legal regulations issued by state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies and related to the scope of activities of a public association and important issues of State and public life (Koshykov, 2020; Law of Ukraine On Public Associations, 2012).

4. Conclusions

To sum up, we propose to consider the guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State as a set of legal provisions that define the legal conditions and means, the procedure for the realisation, protection and defence of the rights of persons in relations with public authorities and local self-government bodies regarding the realisation of economic rights of citizens and the formation and implementation of public policy.

The features of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State are: 1) the regulatory and legal framework; 2) special legal means; 3) the procedure and conditions for the implementation of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic security of the State, which are prescribed at the legislative level; 4) protection in case of violation of guarantees of the rights of participants in administrative and legal relations in the field of making public policy on economic

security of the State; 5) legal and economic instruments for the protection and defence of the rights of participants in the relevant relations; 6) a binding nature; 7) the purpose of introducing the latter is a balance between economic profit and public interest in a par-

ticular sector of the economy; 8) they are a separate element of the administrative and legal mechanism for ensuring economic security; 9) depending on the threats to economic security, the latter tend to protect the public interest in a particular sector of the economy, etc.

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ГАРАНТІЇ ПРАВ УЧАСНИКІВ АДМІНІСТРАТИВНО-ПРАВОВИХ ВІДНОСИН У СФЕРІ РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ В ГАЛУЗІ ЗАБЕЗПЕЧЕННЯ ЕКОНОМІЧНОЇ БЕЗПЕКИ ДЕРЖАВИ

Анотація. *Метою* статті є визначити правову природу та сутність гарантій прав учасників адміністративно-правових відносин щодо реалізації державної політики у галузі забезпечення економічної безпеки держави. *Результати.* У статті визначено сутність гарантій прав учасників адміністративно-правових відносин у сфері реалізації державної політики у галузі забезпечення економічної безпеки держави. У дослідженні проаналізовано такі поняття як: «гарантія», «юридичні гарантії». Наведено класифікацію й визначено сутність кожної із гарантій прав учасників адміністративно-правових відносин у сфері реалізації державної політики у галузі забезпечення економічної безпеки держави. Зауважено, що ознаками гарантій прав учасників адміністративно-правових відносин у сфері реалізації державної політики у галузі забезпечення економічної безпеки держави є: нормативно-правове закріплення; мають спеціальні юридичні засоби; закріплені на законодавчому рівні порядок і умови реалізації гарантій прав учасників адміністративно-правових відносин у сфері реалізації державної політики у галузі забезпечення економічної безпеки держави; забезпечення захистом у разі порушення гарантій прав учасників адміністративно-правових відносин у сфері реалізації державної політики у галузі забезпечення економічної безпеки держави.

Висновки. Зроблено висновок, що ознаками гарантій прав учасників адміністративно-правових відносин у сфері реалізації державної політики у галузі забезпечення економічної безпеки держави є: 1) закріплення у нормативно-правових актах; 2) наявність спеціальних юридичних засобів; 3) законодавча регламентація порядку і умов реалізації гарантій прав учасників адміністративно-правових відносин у сфері реалізації державної політики у галузі забезпечення економічної безпеки держави; 4) захист у разі порушення гарантій прав учасників адміністративно-правових відносин у сфері реалізації державної політики у галузі забезпечення економічної безпеки держави; 5) містять правові та економічні інструменти охорони та захисту прав учасників відповідних відносин; 6) мають загальнообов'язковий характер; 7) метою запровадження останніх є баланс між економічним прибутком та публічним інтересом в певній сфері економіки; 8) є окремим елементом адміністративно-правового механізму забезпечення економічної безпеки; 9) в залежності від загроз економічній безпеці останні мають тенденцію до захисту саме публічного інтересу в тій чи іншій сфері економіки тощо.

Ключові слова: гарантії, права, гарантії прав, адміністративно-правові відносини, реалізація державної політики в галузі забезпечення економічної безпеки держави, економічна безпека.

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