

UDC 349.2

DOI <https://doi.org/10.32849/2663-5313/2023.2.03>**Valentyn Melnyk,**

PhD in Law, Associate Professor, Senior Lecturer at the Department of Legal Support of Economic Activity and Financial Security, Kharkiv National University of Internal Affairs, 27, Lev Landau avenue, Kharkiv, Ukraine, postal code 61080, melnykvalentyn@ukr.net

ORCID: orcid.org/0000-0001-9348-8444

Melnyk, Valentyn (2023). The concept of guarantees of observing rights of an employee who has caused damage to the employer. *Entrepreneurship, Economy and Law*, 2, 20–24, doi <https://doi.org/10.32849/2663-5313/2023.2.03>

THE CONCEPT OF GUARANTEES OF OBSERVING RIGHTS OF AN EMPLOYEE WHO HAS CAUSED DAMAGE TO THE EMPLOYER

Abstract. Purpose. The purpose of the article is to propose the author's definition of guarantees of observing the rights of an employee who has caused damage to the employer. **Results.** Relying on the analysis of scientific views on the essence of the concept of "guarantees", the article offers the author's definition of "guarantees of observing the rights of an employee who has caused damage to the employer". It is noted that the creation of guarantees is an important duty of the State, regardless of the sector of public relations in question. The author emphasises that the guarantees under study are diverse in nature, and therefore their classification is necessary. At their core, guarantees are a system of conditions that ensure that human needs are met. Their main function is to ensure that the state and other entities fulfil their responsibilities in the field of human rights. The object of guarantees is social relations associated with the protection and defence of human rights, satisfaction of property and non-property interests of citizens. Legal guarantees are a constructive expression of the principle of self-defence of rights. They embody the idea of the coordinated action of law and the state, implying that some forms, trends and functions of the state regulatory framework and activities serve as a protective mechanism for others and vice versa. It is only in this general context of mutual support and coherence of various parts and aspects of the entire state legal system that certain special forms and constructions of legal guarantees of individual rights and freedoms can fulfil their protective role. **Conclusions.** It is concluded that guarantees of observing the rights of an employee who has caused damage to the employer are a set of conditions, instruments and means enshrined in legal regulations of different legal force which are aimed at ensuring, inviolability and proper exercise of the rights, freedoms and interests of persons who shall compensate for damage to the employer. Observance of these guarantees is an important prerequisite for meeting the principles of legality and justice in the relevant field. It should be emphasised that the guarantees under study are diverse in nature, and therefore their classification is necessary.

Key words: classification, guarantees, observance, rights, freedoms, employees, damage, employer.

1. Introduction

Compensation for damage caused by an employee is a complex concept by its nature and essence. Moreover, compensation for damage always involves the risk of violating employees' rights. In order to avoid such situations, the law provides for a number of different guarantees aimed at ensuring and observing the rights of an employee who has caused damage to the employer. The creation of guarantees is the duty of the state to the individual and to entire society. State authorities should ensure and protect the rights and freedoms of citizens, enter into relations with citizens regarding the direct exercise of these rights (Puchk-

ova, 1987, p. 140). And the issue presented in this research is no exception.

Some problematic issues related to the protection of the rights and freedoms of employees who have caused damage to the employer have been considered in their scientific works by: V.S. Venediktov, V.V. Haievyi, O.Y. Kostiuhenko, T.Ye. Krysan, Ye.Yu. Podorozhnyi, Ya.S. Protopopova, I.A. Rymar, P.R. Stavyskyi, N.M. Khutorian, V.V. Yakovlev, and many others. However, despite a considerable number of scientific achievements, the issue of guarantees of observing the rights of an employee who has caused damage to the employer has actually remained unaddressed by scholars.

Consequently, the purpose of the article is to propose the author's definition of guarantees of observing the rights of an employee who has caused damage to the employer.

2. Functions and the content of guarantees

First, it should be noted that a guarantee (from the French *Garantie*) is defined in dictionaries as moral or material responsibility assumed by an individual, state, enterprise, commercial or other structure for the fulfilment, observance, etc. of any obligations, as well as for the condition, quality of something (Dal, 1880, p. 267). O. Kulinich interprets a guarantee as a certain phenomenon that ensures the achievement of a specific positive result, namely the realisation of the right to education by citizens. The guarantee contains two integral components: it implements and protects. Therefore, today it is important to develop such theoretical legal remedies and conditions that would be maximally realised and protected in practice (Kulinich, 2014, pp. 79–80). M.I. Matuzov and O.V. Malko convincingly prove that guarantees are a socio-political and legal phenomenon which is: 1) cognitive, as it allows to reveal substantive theoretical knowledge about the object of their (guarantees') influence, to gain practical knowledge about the social and legal policy of the state; 2) ideological, as it is used by the political authorities as a means of promoting democratic ideas within the country and abroad; 3) practical, as it is recognised as an instrument of jurisprudence, a prerequisite for satisfaction of social benefits of a person. Relying on this, the authors define guarantees as a system of socio-economic, political, legal organisational prerequisites, conditions, means and methods that create opportunities for an individual to exercise his or her rights, freedoms and interests (Matuzova, Malko, 1997, p. 275).

L.D. Voevodin believes that guarantees are a reliable bridge that ensures the transition from the general to the particular, from the possibility proclaimed in the law to reality, which is necessary in the foundations of the legal status of a person. Guarantees are necessary for the legal status in general and for each of its elements. However, first and foremost, they are required for rights, freedoms and duties. Therefore, the scholar concludes that, in a broad sense, the concept of "guarantees" covers the entirety of objective and subjective factors aimed at the true realisation of the rights and freedoms of citizens, at eliminating possible causes and obstacles to their incomplete or improper exercise, and at protecting rights from violations that are far too frequent today. Although these factors are very diverse, in

relation to the process of exercising rights and freedoms, they act as conditions, means, ways, techniques and methods for its proper implementation. Therefore, guarantees should be understood as the conditions and means that ensure the realisation and comprehensive protection of the rights and freedoms of everyone (Voevodin, 1997, p. 222).

According to B.I. Stakhur, guarantees should be considered in a broad and narrow sense. Therefore, broadly "guarantees" means the totality of objective and subjective factors aimed at full implementation and comprehensive protection of the rights and freedoms of citizens, elimination of causes and conditions for their improper exercise and protection against violations. By establishing the content and scope of human rights and freedoms, the state assumes the responsibility for ensuring that these guidelines are met. Moreover, given that the exercise of the rights and freedoms of citizens is inevitably associated with the need to apply procedural coercion measures, the state is forced to develop an effective mechanism to limit the claims of public authorities to undivided dominance in regulating relations with the population. In this regard, guarantees can be viewed as a system of conditions, means and ways that ensure equal opportunities for the identification, acquisition and exercise of rights and freedoms (Stakhura, 2016, pp. 90–91).

Therefore, in essence, guarantees are a system of conditions that ensure that human needs are met. Their main function is to ensure that the state and other entities fulfil their responsibilities in the field of human rights. The object of guarantees is social relations associated with the protection and defence of human rights, satisfaction of property and non-property interests of citizens (Alekseev, 1995, p. 275).

E. Khazov argues that legal guarantees should be understood as the recognition and consolidation of human and civil rights, freedoms and obligations in the Constitution and other regulations of the State and ensuring their implementation by all law enforcement activities of the State, socio-political organisations, their officials and the individual (Khazov, 2011, p. 146). V.M. Skobelkin believes that legal guarantees are legal and organisational means and ways to ensure the exercise of rights and fulfilment of obligations provided for by law. They represent a complex system of interacting elements that allow organising comprehensive support for different stages of exercising rights and duties, protection against encroachments, and restoration of violated legal rights (Skobelkin, 1996, p. 78). According to O. Nehodchenko, legal guarantees are organisational guarantees provided for by the Constitution and laws,

which constitute the legal form of activities of the State and all its bodies, officials and civil society organisations to create an enabling environment for citizens to actually exercise their rights, as well as regulatory and legal guarantees, which constitute a system of norms for the exercise of human and civil rights and freedoms and a legal mechanism for their practical enforcement, protection and defence. Among the regulatory and legal guarantees, procedural norms are of importance as a system of legal means established by law for the administration of justice, protection of human rights and freedoms in criminal and civil proceedings, and fulfilment of the tasks of criminal and civil proceedings (Rymarenko, Kondratiev, Tatsii, Shemshuchenko, 2005, pp. 256–257).

3. Legal guarantees and their place in labour law

Following V.S. Nersesiants, legal guarantees are a system of interrelated forms and means (regulatory, institutional, procedural) that ensure proper recognition, protection and enforcement of certain rights and their duties. Legal guarantees are a constructive expression of the principle of self-defence of rights. They embody the idea of the coordinated action of law and the state, implying that some forms, trends and functions of state regulatory framework and activities serve as a protective mechanism for others and vice versa. It is only in this general context of mutual support and coherence of various parts and aspects of the entire state legal system that certain special forms and constructions of legal guarantees of individual rights and freedoms can fulfil their protective role. To sum up, legal guarantees themselves require legal guarantees, and these can ultimately be provided by the legal state and laws (Nersesiants, 1999, p. 142).

S.S. Klimovskyi argues that legal guarantees are a set of statutory conditions, methods and means by which the conditions and procedure for exercising the rights and freedoms of a person are determined, as well as their protection, defence and restoration in case of violation, they are systemic, comprehensive, permanent, real and legally reliable. The role and significance of legal guarantees is determined by the fact that they create the necessary conditions for the transformation of human and civil rights and freedoms enshrined in the law from opportunities into reality. The scholar identified the following as key features of guarantees: 1) regularisation, which provides for the definition of guarantees only in the texts of legal regulations; 2) consistency – legal guarantees constitute a single system with stable links and relatively autonomous elements, which are represented by guarantees of specific rights

and freedoms; 3) permanence – legal guarantees have a permanent, stable, continuous nature; 4) actuality – legal guarantees should be aimed at direct implementation, protection and defence of the right, be non-declarative and be provided by a system of rules that create a mechanism for the implementation of legal guarantees; 5) comprehensiveness – legal guarantees are applied in a combination, the exercise of rights and freedoms can be carried out on the basis of comprehensive application of guarantees, provided that there is an effective mechanism for their implementation; 6) legal reliability – the interrelation of the guarantee with the social situation and the stability of its social content (Klimovskyi, 2015, p. 19).

According to T.V. Kurylo, legal guarantees in labour law are a system of legal provisions provided for by labour legislation which require certain conduct of participants in labour relations (by establishing rights and duties), and the activities of these actors which are based on the provisions of law, enforced by sanctions and are aimed at unimpeded actual implementation, protection and defence of labour rights (Kurylo, Tataryn, 2008, p. 156). In addition, Y.A. Dzhepa considers legal guarantees in labour law as a complex system and offers the following classification of legal guarantees provided for by the Labour Code of Ukraine as a subsystem in the general system of labour legal guarantees: guarantees of the constitutional right to work, which are enshrined in Section 1 "General Provisions" of the Labour Code of Ukraine; guarantees for concluding, amending or terminating an employment contract; guarantees for various participants of labour relations (guarantees for authors of inventions, industrial designs, utility models; guarantees for employees elected to trade union bodies; guarantees for women, pregnant women, women raising children; guarantees for employees who combine work and study, etc.); guarantees for employees who temporarily do not perform their labour functions in cases provided for by labour legislation (guarantees for employees on elected positions; guarantees for donors, guarantees for employees who are sent for medical examination to a medical institution, etc.); guarantees for employees in case of changes in working conditions (business trips, relocation to another location); guarantees for the material liability of employees and employers (Dzhepa, 2009, p. 127).

In O.A. Anton's opinion, the specificity of legal guarantees enshrined in the Labour Code of Ukraine is due to the special subject matter of the regulatory framework and is as follows: a) some legal guarantees have a limited scope, i.e. they apply only to a certain category of persons (for example, they are intended for young people, women, working mothers); b) legal

guarantees enshrined in the Labour Code are characterised by the non-simultaneous entry into force: some guarantees come into force before the labour relationship arises (for example, the prohibition on the employer's demanding documents and information about a person not required by law during the hiring process – Article 25 of the Labour Code); others – only after their occurrence (for example, salary guarantees become effective only after the employee has started performing his or her employment duties); depending on the employee's age, gender, health status, and area of employment (e.g., it is prohibited to dismiss an employee at the employer's initiative during the period of temporary disability – Part 3 of Article 40 of the Labour Code); in certain circumstances (e.g., after an employee is unlawfully dismissed, legal guarantees come into force to give the employee the right to seek protection of his or her rights in court and give rise to a new duty for the employer to reinstate the unlawfully dismissed employee); c) as well as their occurrence, the termination of guarantees is non-simultaneous: regardless of the person's will (for example, reaching the age of majority terminates the right to extended minimum annual labour leave); as a result of certain actions (for example, if an employee fails to report to work for more than 4 consecutive months due to temporary disability, the employer has the right to dismiss the employee. That is, in this case, the guarantee provided for in Part 3 of Article 40 of the Labour Code does not apply) (Anton, 2005, p. 190).

4. Conclusions

Therefore, the guarantees of observing the rights of an employee who has caused damage to the employer are a set of conditions, instruments and means enshrined in legal regulations of different legal force which are aimed at ensuring, inviolability and proper exercise of the rights, freedoms and interests of persons who shall compensate for damage to the employer. Observance of these guarantees is an important prerequisite for meeting the principles of legality and justice in the relevant field. It should be emphasised that the guarantees under study are diverse in nature, and therefore their classification is necessary.

References:

- Alekseev, S.S.** (1995). Teorija prava [Theory of law]. M.: BEK [in Russian].
- Anton, O.A.** (2005). Yurydychni harantii v trudovomu pravi [Legal guarantees in labor law]. *Universytetski naukovyi zapysky – University Scientific Notes*, 3, 185–190 [in Ukrainian].
- Dal, V.I.** (1880). *Tolkovyj slovar' zhivogo velikorusskogo jazyka* [Explanatory dictionary of the living Great Russian language]. M.: Iskra [in Russian].
- Dzhepa, Yu.A.** (2009). Systema yurydychnykh harantii, peredbachena Kodeksom zakoniv pro pratsiu [The system of legal guarantees provided for by the Code of Labor Laws]. *Pivdenmoukrainskyi pravnychi chasopys – South Ukrainian Legal Journal*, 2, 127–129 [in Ukrainian].
- Khazov, E.N.** (2011). Konstitucionnye garantii prav i svobod cheloveka i grazhdanina v Rossii: teoreticheskie osnovy i problemy realizacii [Constitutional guarantees of the rights and freedoms of man and citizen in Russia: theoretical foundations and problems of implementation]. *Doctor's thesis*. Moskva [in Russian].
- Klimovskyi, S.S.** (2015). Tsyvilno-pravovi harantii zdiisnennia ta zakhystu prava na osobysti papery [Civil legal guarantees of the exercise and protection of the right to personal papers]. *Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu – Scientific Bulletin of the International Humanitarian University*, 15 (2), 18–21 [in Ukrainian].
- Kulinich, O.O.** (2014). Harantii konstytutsiinoho prava na osvitu: poniattia ta oznaky [Guarantees of the constitutional right to education: concepts and signs]. *Naukovyi visnyk Dnipropetrovskoho derzhavnogo universytetu vnutrishnikh sprav - Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs*, 1, 78–84 [in Ukrainian].
- Kurylo, T.V. Tataryn, I.I.** (2008). Evoliutsiia instytutu prav liudyny [Evolution of the human rights institute]. *Naukovyi visnyk Lvivskoho derzhavnogo universytetu vnutrishnikh sprav – Scientific Bulletin of the Lviv State University of Internal Affairs*, 2, 8–11 [in Ukrainian].
- Matuzova, N.I., Malko, A.V.** (1997). Teorija gosudarstva i prava [Theory of Government and Rights]. Moskva: Jurist [in Russian].
- Nersesiants, V.S.** (1999). Problemy obshhej teorii prava i gosudarstva [Problems of the general theory of law and state]. Moskva [in Russian].
- Puchkova, M.V.** (1987). Obespechenie prav grazhdan organami upravlenija sojuznoj respubliki [Ensuring the rights of citizens by the governing bodies of the Union Republic]. M.: Nauka [in Russian].
- Rymarenko, Yu.I., Kondratiev, Ya.Iu., Tatsii, V.Ia., Shemshuchenko, Yu.S.** (2005). *Mizhnarodna politseiska entsyklopediia* [International police encyclopedia]. Kyiv: In Yure [in Ukrainian].
- Skobelkin, V.N.** (1996). Juridicheskie garantii trudovykh prav naemnykh rabotnikov. Kultura, demokratija i pravo [Legal guarantees of labor rights of employees. Culture, democracy and law]. Novosibirsk [in Russian].
- Stakhura, B.I.** (2016). Rol orhaniv derzhavnoi vlady u zabezpechenni prav liudyny i hromadianyna v demokratychnomu suspilstvi [The role of state authorities in ensuring human and citizen rights in a democratic society]: teoretyko-pravovy vymir. *Candidate's thesis*. Lviv: Lvivskiy derzhavnyi universytet vnutrishnikh sprav [in Ukrainian].
- Voevodin, L.D.** (1997). Juridicheskij status lichnosti v Rossii [The legal status of the individual in Russia]. M.: Izdatelstvo MGU, Izdatelskaja gruppa INFRA [in Russian].

Валентин Мельник,

кандидат юридичних наук, доцент, доцент кафедри правового забезпечення підприємницької діяльності і фінансової безпеки, Харківський національний університет внутрішніх справ, проспект Льва Ландау, 27, Харків, Україна, індекс 61000, melnykvalentyn@ukr.net

ORCID: orcid.org/0000-0001-9348-8444

ПОНЯТТЯ ГАРАНТІЙ ДОТРИМАННЯ ПРАВ ПРАЦІВНИКА, ЯКИМ БУЛА ЗАВДАНА ШКОДА РОБОТОДАВЦЮ

Анотація. *Мета* статті – запропонувати авторське визначення гарантій дотримання прав працівника, яким була завдана шкода роботодавцю. *Результати.* За результатами аналізу наукових поглядів вчених стосовно сутності поняття «гарантії» у статті запропоновано авторське визначення «гарантії дотримання прав працівника, яким була завдана шкода роботодавцю». Відмічено, що створення гарантій – це важливий обов'язок держави, незалежно від того, про яку сферу суспільних відносин йдеться. Акцентовано увагу на тому, що досліджувані гарантії є різноманітними за своєю природою, а отже, потрібна їх класифікація. За своєю суттю гарантії – це система умов, які забезпечують задоволення потреб людини. Їх головною функцією є виконання обов'язків державою та іншими суб'єктами у сфері реалізації прав людини. Об'єктом гарантій є суспільні відносини, які пов'язані з охороною та захистом прав людини, задоволенням майнових і немайнових інтересів громадян. Юридичні гарантії – це конструктивне вираження принципу самозахисту прав. Вони, продовжують науковець, втілюють ідею узгодженої дії права та держави, коли одні форми, напрями й функції державно-правового регулювання та діяльності слугують водночас захисним механізмом для інших і навпаки. І лише в такому загальному контексті взаємної підтримки й узгодженості різних частин і аспектів усього державно-правового комплексу окремі спеціальні форми та конструкції юридичних гарантій прав і свобод особистості можуть реально здійснити свою захисну роль. **Висновки.** Зроблено висновок, що гарантії дотримання прав працівника, яким була завдана шкода роботодавцю, є сукупністю закріплених у нормативно-правових актах різної юридичної сили умов, інструментів та засобів, що спрямовані на забезпечення, непорушність і належну реалізацію прав свобод та інтересів осіб, які повинні відшкодувати шкоду роботодавцю. Дотримання вказаних гарантій є важливою запорукою дотримання принципів законності та справедливості у відповідній сфері. Слід підкреслити, що досліджувані гарантії є різноманітними за своєю природою, а отже, потрібна їх класифікація.

Ключові слова: класифікація, гарантії, дотримання, права, свободи, працівники, шкода, роботодавець.

The article was submitted 16.10.2023

The article was revised 07.01.2023

The article was accepted 27.11.2023