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ADMINISTRATIVE AND LEGAL GUARANTEES FOR DEVELOPMENT OF ARTIFICIAL INTELLIGENCE IN UKRAINE: CONCEPT AND SYSTEM

Abstract. Purpose. The purpose of the article is to define the concept and system of administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine. **Results.** The article examines the concept and system of administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine. It is underlined that administrative and legal guarantees are a type of legal guarantees along with civil law, criminal law, constitutional and international guarantees. Administrative and legal guarantees for the development of artificial intelligence in Ukraine are proposed to consider as a system of administrative law instruments aimed at improving the efficiency of activities related to the creation, implementation and use of artificial intelligence, while ensuring democratic values, observance of the rule of law, as well as fundamental rights and freedoms of man and of the citizen. The activities related to the creation, implementation and use of artificial intelligence technologies, as one of the areas of realisation of human rights to development, intellectual activity and meeting of economic, social, cultural and other interests, should not be left without proper support and provision by state institutions, including through administrative and legal means. These are appropriate guarantees from the state. **Conclusions.** We propose to include the following groups of guarantees into the system of administrative and legal guarantees for the development of artificial intelligence: institutional – administrative and legal provisions constituting the legal basis for the creation, implementation and use of artificial intelligence and its public administration; functional – administrative law provisions that ensure the creation of an enabling environment for the development of artificial intelligence technologies, as well as protect the rights and interests of physical persons or legal entities involved in the creation, implementation and use of artificial intelligence; organisational – administrative and legal provisions regulating the activities of public administration bodies in controlling and monitoring activities related to the creation, implementation and use of artificial intelligence.

Key words: administrative and legal guarantees, public administration, development of artificial intelligence, institutional guarantees, functional guarantees, organisational guarantees.

1. Introduction

In any democratic, legal and social state, which is being developed in Ukraine, human and civil rights and freedoms cannot be declarative; their implementation must be supported and ensured by such a state.

Accordingly, the Constitution of Ukraine, Article 3, Part 2, provides as follows: "Human rights and freedoms and their guarantees determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall

be the main duty of the State" (Constitution of Ukraine, 1996).

The activities related to the creation, implementation and use of artificial intelligence technologies, as one of the areas of realisation of human rights to development, intellectual activity and meeting of economic, social, cultural and other interests, should not be left without proper support and provision by state institutions, including through administrative and legal means. These are appropriate guarantees from the state.

In other words, in the administrative and legal mechanism for ensuring public admin-

istration of the type of activity under consideration, State support guarantees are of importance, since the effectiveness of development of artificial intelligence technologies largely depends on the effective implementation of a range of such guarantees (Kurkova, 2020, p. 32). Implementation of social reforms and development strategies requires improvement of the use of the institution of state guarantees, which allows to ensure the realisation of the interests of citizens, legal entities, local self-governments and the entire state, as well as to increase the efficiency and effectiveness of public administration and regulatory mechanism, strengthen economic stability, improve approaches to the functioning of any branch of public administration (Kucher, 2019, pp. 113–114).

In addition, the use of artificial intelligence is an increasingly important factor in the development of the digital economy of any state, but uncertainty in its development and possible threats from its use raise questions and require legal guarantees for the safe operation of artificial intelligence systems (Telychko, Rekun, Chabanenko, 2021, p. 311).

However, the doctrine of administrative law lacks research on administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine.

The purpose of the article is to define the concept and the system of administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine.

2. General provisions of administrative and legal guarantees for the development of artificial intelligence in Ukraine

In the *Great explanatory dictionary of modern Ukrainian language*, the term "guarantee" is interpreted, in particular, as: "A pledge of something, something given as security. // An obligation provided for by law or a specific agreement, under which a legal entity or individual is liable to creditors in the event of a debtor's failure to fulfil its duties" (Busel, 2005, p. 222).

The theory of state and law understands guarantees (from the French *garantie* – security, pledge) of human and civil rights and freedoms as a system of general (political, economic, spiritual, etc.) and special legal means and institutions aimed at creating an enabling environment for the realisation of human rights, as well as ensuring their comprehensive protection and protection against violations (Tsvik, Petryshyn, Avramenko, 2009, p. 456). M. Koziubra argues that a guarantee is "to some extent related to public coercion, which is necessary in case of possible violation of norms" (Koziubra, 2015, p. 128). Guarantees can be of different nature, depending on the field of existence: political, economic, spiritual and legal.

The issues of legal guarantees have always been under focus by scholars and continue to be relevant. The works by legal scholars, such as: V. Averianov, O. Malko, M. Matuzova, V. Pohorilka, N. Shevchenko, etc., are well-known. However, despite the significant achievements of the topic in the general theoretical perspective, today there are no studies with a comprehensive theoretical and legal analysis of guarantees of administrative and legal support in some sectors of public administration, which determines the relevance of the subject matter of this study and the need for further research in this area (Kurkova, 2019, p. 48). This is true, in particular, of the guarantees of administrative and legal support for the development of artificial intelligence in Ukraine.

The legal guarantees of human and civil rights and freedoms in the theory of state and law include legal procedures for their implementation, the right to know one's rights and duties, and the right to legal aid, including free of charge, to judicial defence, to appeal in court against decisions, actions or omissions of state authorities, local self-government bodies, officials and employees, to compensation from the state or local self-government bodies for material and moral damage caused by their unlawful decisions, actions or omissions, and to establish legal liability for violations or restrictions of human rights (Tsvik, Petryshyn, Avramenko, 2009, p. 457). An important characteristic of legal guarantees is "their specific definition of legal means, conditions and procedure for the realisation of human rights, their protection and defence" (Yatskevych, 2016, p. 13).

The provisions of national law define different approaches to the interpretation of State guarantees, allowing for the specifics of the branch of law, which affects the study of their essence and features. The study and generalisation of this concept enables to identify the characteristic features of State guarantees and to propose areas for improving the effectiveness of their use for ensuring social development (Kucher, 2019, p. 113). It should be noted that "administrative and legal guarantees are a type of legal guarantees along with civil law, criminal law, constitutional and international guarantees" (Sakun, 2020, p. 60). Therefore, the question is how to understand guarantees through the prism of administrative law.

According to V. Averianov, administrative and legal guarantees of the rights and freedoms of citizens are a set of administrative and legal means ensuring the completeness, sustainability and stability of the rights and freedoms of citizens in the field of public administration (Averianov, 2008, p. 310). According to K.M. Kurkova, they are a set of means and conditions provided

for in the provisions of substantive and procedural administrative law, through which administrative and legal support of human rights and freedoms is provided by public administration bodies (Kurkova, 2019, p. 49). O.O. Navrotskyi argues that administrative and legal guarantees are a set of statutory "state power measures" with the aim of creating an enabling environment for the exercise of rights, their protection in case of a threat of encroachment, restoration and compensation in case of violation (Navrotskyi, 2018, p. 7). D.I. Sakun argues that "administrative and legal guarantees establish a mechanism for the implementation of rights and freedoms, control the observance of rights and freedoms in the activities of individuals and legal entities, ensure the protection of rights and freedoms, restore them in case of violation and establish the procedure for liability for administrative torts that infringe on the established public order" (Sakun, 2020, p. 61). It is important to understand that such guarantees must be effective, that is, capable of delivering a positive result.

Thus, it is only through the effective functioning of administrative and legal guarantees that it is possible to receive public administration services, ensure and protect violated rights (Kostiushko, 2017, p. 162).

Therefore, administrative and legal guarantees of the rights and freedoms of citizens should be understood as a system of administrative law means which should effectively ensure human rights and freedoms in the field of public administration.

With regard to administrative and legal guarantees in individual sectors of public administration, for example, O. Batanov understands such guarantees in the field of municipal administration as the political, legal and socio-economic environment and a special mechanism necessary for the acquisition, possession, use and disposal of municipal rights and freedoms and which together ensure and protect the activities of public administrators in the exercise of the powers granted (Batanov, 2001, p. 180). According to D.I. Sakun, administrative and legal guarantees of free legal aid by attorneys are a set of conditions, means and ways of ensuring activities in the field of free legal aid by attorneys provided for by the provisions of administrative law, namely, the establishment of a mechanism for exercising the right to free legal aid, monitoring the quality, qualification and impartiality of the provision of free legal aid by a lawyer and bringing him or her to disciplinary responsibility in case of improper performance of his or her professional duties and restoring the right to free legal aid to attorneys in case of its violation with full or partial

payment for the services of attorneys from the state or local budgets (Sakun, 2020, p. 3).

However, the closest to the topic of our study are the guarantees of administrative and legal support for scientific and technological development of Ukraine, which were studied by K.M. Kurkova, who understands these guarantees as "independent instruments of the administrative and legal support mechanism, which by their legal nature are separate legal, financial, economic and social means of ensuring (guaranteeing) and protecting the rights of actors of scientific and technological activities created by the state for the purpose of stable and sustainable implementation of scientific and technological development in society" (Kurkova, 2019, p. 49). In this sense, guarantees are ones of administrative and legal support, which include not only legal but also financial, economic and social guarantees. However, the study of the latter two groups of guarantees is not within the scope of our research, since we will only consider administrative and legal guarantees.

3. The Concept and system of administrative and legal guarantees for the development of artificial intelligence in Ukraine

In order to formulate the definition of administrative and legal guarantees ensuring the development of artificial intelligence, it is advisable to refer to the Concept of artificial intelligence development in Ukraine, according to which one of the principles of development and use of artificial intelligence technologies is the development and use of artificial intelligence systems subject to the rule of law, fundamental rights and freedoms of man and citizen, democratic values, as well as ensuring appropriate guarantees in the use of such technologies (Averianov, 2008). Therefore, for the branch of public administration under consideration, important guarantees should include instruments to ensure compliance with the rule of law, fundamental rights and freedoms of man and citizen, and democratic values.

The next issue to consider is the classification of administrative and legal guarantees.

According to D.I. Sakun, such classification is the process of ordering, systematisation and grouping of administrative and legal guarantees into types for the purpose of clarifying their multidimensionality and factual determination (Sakun, 2020, p. 95). For example, L.Yu. Veselova proposes the following classification criteria: by the method of legal regulation, by functional orientation, by rule-makers, by the form of implementation and by the nature of influence (Veselova, 2016, p. 10). In V.O. Hryniuk's opinion, there are organisational and legal, substantive and organisational, procedural guar-

antees (Hryniuk, 2004, p. 70). V.A. Holovko groups administrative and legal guarantees into: "administrative and legal guarantees ensuring the implementation of rights and freedoms, and administrative and legal guarantees aimed at protection and defence" (Holovko, 2011, p. 16). D.I. Sakun argues that administrative and legal guarantees establish a mechanism for the implementation of rights and freedoms, control the observance of rights and freedoms in the activities of individuals and legal entities, ensure the protection of rights and freedoms, restore them in case of violation, and establish the procedure for liability for administrative torts that infringe upon the established public order (Sakun, 2020, p. 61). Therefore, the latter two classifications of guarantees are based on their functional purpose.

In this regard, D.I. Sakun states that the variety of criteria for classification of administrative and legal guarantees indicates their originality and exclusivity, since only a multidimensional approach is able to ensure the fixation of their features and correlations (Sakun, 2020, p. 92). Therefore, for our study, it is advisable to choose one criterion and classify according to it, since a thorough analysis of all existing positions is not within the scope of our article.

Moreover, with regard to certain branches of public administration, some scholars do not specify the criterion by which they classify guarantees.

For example, K.M. Kurkova, without naming a criterion, makes a proposal of the following classification of legal guarantees, the object of which is administrative and legal relations in the field of scientific and technological development: 1) protection and defence of intellectual property rights, which involves various functional and legal instruments, the priority thereof is to protect intellectual property rights at all stages of its implementation; 2) creation and functioning of a system of scientific and technical information, that is, a unified base for systematisation of information resources of scientific and technological activities to reflect its reliable results in society; 3) ensuring functioning and administrative support for state registers of objects of scientific and technological development; 4) state support for the implementation of scientific, scientific and technical expertise, which in the mechanism of administrative and legal support serves as both a tool and a guarantee that systematically allows to verify and guarantee the correctness, quality and safety of scientific and technological activities; 5) ensuring a comprehensive system of quality management of scientific and technological development through standardisation, certification and metrological support; 6) the

organisational and legal component of state support for international scientific and technological cooperation, which is determined by state integration measures of a legal and organisational nature, aimed at the overall development of the international, national scientific and technological area and the adoption of good practices for individual states; 7) administrative liability as a guarantee of proper scientific and technological development (Kurkova, 2021, pp. 186–187). Given that the development of artificial intelligence technologies is in the field of scientific and technological development, the above list of guarantees is largely relevant to the field of public administration under consideration, but this list does not consider its specifics and needs to be systematised.

Therefore, a more successful position, one which meets modern requirements, is the classification of administrative and legal guarantees by their purpose, as proposed by I.I. Kohutych, namely: organisational (ensuring organisationally separate, autonomous and independent development of legal institutions), institutional (creating a "harmoniously developed progressive legal framework"), functional (ensuring appropriate conditions and means for the implementation of the provisions enshrined in legal acts) (Kohutych, 2018, p. 84).

Similarly, D.I. Sakun identifies the following types of administrative and legal guarantees of free legal aid by advocates: a) institutional – the rules which establish the legal basis for the provision of free legal aid by attorneys and receipt of free legal aid by other persons; b) functional – ensure the creation of an enabling environment for the performance by attorneys of their duties in providing legal aid, as well as protect their rights and interests; c) organisational – the activities of public administration bodies in monitoring and controlling the process of providing legal aid by attorneys (Sakun, 2020, p. 94).

Therefore, we propose to group the administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine, depending on their functional purpose, into institutional, functional and organisational ones.

4. Conclusions

Therefore, in this study, administrative and legal guarantees for the development of artificial intelligence in Ukraine are considered as a system of administrative law instruments aimed at improving the efficiency of activities related to the creation, implementation and use of artificial intelligence, while ensuring democratic values, observance of the rule of law, as well as fundamental rights and freedoms of man and of the citizen.

We propose to include the following groups of guarantees into the system of administrative and legal guarantees for the development of artificial intelligence:

– Institutional – administrative and legal provisions constituting the legal basis for the creation, implementation and use of artificial intelligence and its public administration;

– Functional – administrative law provisions that ensure the creation of an enabling environment for the development of artificial intelligence technologies, as well as protect the rights and interests of physical persons or legal entities involved in the creation, implementation and use of artificial intelligence;

– Organisational – administrative and legal provisions regulating the activities of public administration bodies in controlling and monitoring activities related to the creation, implementation and use of artificial intelligence

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АДМІНІСТРАТИВНО-ПРАВОВІ ГАРАНТІЇ ЗАБЕЗПЕЧЕННЯ РОЗВИТКУ ШТУЧНОГО ІНТЕЛЕКТУ В УКРАЇНІ: ПОНЯТТЯ ТА СИСТЕМА

Анотація. Мета. Метою статті є визначення поняття та системи адміністративно-правових гарантій забезпечення розвитку штучного інтелекту в Україні. **Результати.** Досліджено поняття та систему адміністративно-правових гарантій забезпечення розвитку штучного інтелекту в Україні. Наголошено, що адміністративно-правові гарантії є різновидом юридичних гарантій поряд із цивільно-правовими, кримінально-правовими, конституційно-правовими й міжнародними. Під адміністративно-правовими гарантіями забезпечення розвитку штучного інтелекту в Україні пропонується розуміти систему засобів адміністративного права, що спрямовані на підвищення ефективності діяльності зі створення, впровадження та використання штучного інтелекту та забезпечують при цьому демократичні цінності, дотримання верховенства права, а також основоположні права і свободи людини і громадянина. Діяльність зі створення, впровадження та використання технологій штучного інтелекту, як один із напрямів реалізації прав людини на розвиток, інтелектуальну діяльність і задоволення економічних, соціальних, культурних та інших інтересів, також не повинна залишатися без належної підтримки та забезпечення з боку державних інституцій, зокрема, за допомогою адміністративно-правових засобів. Йдеться про відповідні гарантії з боку держави. **Висновки.** До системи адміністративно-правових гарантій забезпечення розвитку штучного інтелекту пропонуємо відносити такі групи гарантій: інституційні – адміністративно-правові норми, що забезпечують правову основу діяльності зі створення, впровадження та використання штучного інтелекту та її публічного адміністрування; функціональні – норми адміністративного права, що забезпечують створення сприятливих умов для розвитку технологій штучного інтелекту, а також захищають права й інтереси фізичних або юридичних осіб, які залучені до діяльності зі створення, впровадження та використання штучного інтелекту; організаційні – адміністративно-правові норми, що регламентують діяльність органів публічного адміністрування стосовно здійснення контролю та моніторингу за діяльністю зі створення, впровадження та використання штучного інтелекту.

Ключові слова: адміністративно-правові гарантії, публічне адміністрування, розвиток штучного інтелекту, інституційні гарантії, функціональні гарантії, організаційні гарантії.

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