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THE CONCEPT AND STRUCTURE OF THE STATE MECHANISM FOR GUARANTEEING THE PROTECTION OF HUMAN RIGHTS

Abstract: Ensuring a decent quality of life in a modern state is impossible in isolation from the protection of human rights and freedoms. The system of rights and freedoms acts as a universal legal mechanism that mediates the access of members of society to fundamental, vital social benefits. In the system of guarantees of human rights, which includes various instruments of a socio-economic, cultural, ideological and other nature, state guarantees traditionally occupy a significant place. To date, the state has come a long way towards institutionalizing human rights. The current situation in this area is characterized by a combination of relatively complete and consistent normative consolidation of fundamental rights and human freedoms with a clearly unsatisfactory state of their practical implementation, expressed in the impossibility for a significant part of the population to fully use their rights, in their systematic violations and in the absence of reliable mechanisms for their restoration and protection.

Key words: protection, rights, guarantee, freedom, implementation, mechanism, citizen, person, state.

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Introduction

“The tradition of a strong state is characteristic of the Kyrgyz Republic,” said S.Sh. Jeenbekova, President of the Kyrgyz Republic. “Therefore, it is the state that is addressing the main public inquiries today: to ensure the protection of civil rights and justice, to reduce the level of violence and social inequality ...” [1]

Along with the guarantees emanating from civil society and international institutions, state guarantees are designed to strengthen the effectiveness of the mechanism of state protection of human rights and freedoms.

One of the central features of state guarantees for the protection of human rights and freedoms is that these guarantees are based on the legal possibility of enforcement measures. However, another specific feature is related to this: the same institutions that are created as a guarantee of human rights (court, prosecutor's office, police, etc.) can also act as entities violating these rights. [2]

It is proposed to understand state guarantees of human rights protection as a system of political, organizational, special legal means (tools and technologies) that directly express the purpose, competence (powers and duties) and responsibility of the state in the field of ensuring the protection of human rights and are carried out in the human rights activities of its bodies and officials.

The main features (properties) of state guarantees for protecting human rights are highlighted:

- they directly express the purpose of the state as a public-power institution in the field of ensuring the protection of human rights and the content of its human rights function;
- have a comprehensive nature, detail specific political, organizational, special legal opportunities, as well as the state's responsibilities in the field of ensuring the protection of individual rights and freedoms;
- express the type and measure of responsibility (positive and retrospective) of the state to the

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individual for the quality of functioning of the relevant human rights mechanisms;

- carried out in the human rights activities of state bodies and officials;
- by their socio-political and legal nature, they relate to objective guarantees.

Many scientists who study the mechanism for protecting rights and freedoms reveal only its structure, i.e. the internal structure of the system, without analyzing the process of carrying out such activities, the action itself in this case is only implied.

So, O.A. Snezhko [3] believes that the constitutional mechanism for the protection of rights and freedoms is a certain system of bodies, means enshrined in the Constitution, providing the most complete and effective protection of the rights and freedoms of man and citizen. In his opinion, the constitutional mechanism consists of two elements: a system of state bodies with which everyone can protect their rights and freedoms, and remedies (judicial, administrative, civil law, criminal law and others) [4].

B.L. Zheleznov [5] in the mechanism of state protection of human rights and freedoms, and the citizen distinguishes:

- relevant norms of constitutional, administrative, criminal, civil, labor, family, environmental and other branches of law. Moreover, the norms of other branches of law, firstly, follow from the norms of constitutional law, and secondly, the very norms of constitutional law, fixing the status of a person and citizen, are implemented through the norms of other legal branches;
- public relations regulated by the norms of law in the field of state protection of rights and freedoms. These relationships exist in almost all areas of society. They are formed between the individual, public associations, national and other social structures, on the one hand, and the state, on the other;
- guarantees of human and civil rights [4].

A.S. Mordovian [7] proposes to distinguish between a mechanism for ensuring the rights and freedoms of man and citizen in a broad and narrowly professional interpretation. The named mechanism in the broad sense should be presented in the form of four main blocks.

The first block is basic, its core is man as the highest value of democracy.

The second block is the principles of human rights: humanism, justice, equality, freedom, personal integrity, direct operation of the Constitution and others.

The third block is social institutions and normative establishments through which life-affirming values and principles of human rights are directly substantiated, enshrined and implemented.

The fourth block - the procedural control organizationally and procedurally streamlines relations in the field of human rights, creates the most

favorable conditions for the realization of citizens' rights and freedoms, strengthening the rule of law, public and personal security.

In a narrowly professional interpretation, the mechanism of protection and protection of rights and freedoms can be understood as guarantees [7]

It can be assumed that the concept of a mechanism for protecting the rights and freedoms of man and citizen can be considered in a broad and narrow sense.

In a broad sense, this mechanism should consist of the following elements:

- legal norms that established the rights and freedoms of man and citizen;
- legal facts that are the basis for the emergence, amendment or termination of legal relations. For the most part, such legal facts should be unlawful actions - tort, namely violation of established rights and freedoms;
- legal relations - "acting as a means of translating general patterns of behavior, laid down in the rules of law, into concretized and individualized acts of behavior of members of society (subjects of law)";
- activities of subjects of human rights activities, including public authorities within the established powers, non-governmental organizations and the most authorized person to protect their rights and freedoms;
- application by these persons of certain protection methods, namely, those or other means (methods) of protecting violated rights and freedoms;
- social, including legal liability, to which persons who violate the rights and freedoms of man and citizen are brought.

The mechanism for protecting the rights and freedoms of man and citizen in the narrow sense is a set of applied guarantees for the protection of violated rights and freedoms of man and citizen.

The category of guarantees of the rights and freedoms of man and citizen is a complex concept, consisting of subjects of human rights activities, as well as forms and methods of protection, where forms are the conditions provided by law for protecting violated rights, and methods are means and methods of influence by which any a human rights activist can protect fundamental rights and freedoms. Moreover, each form of protection must correspond to a certain method or means of protection, i.e. method of protecting violated rights. This means that the subjects of human rights activities and forms of protection occupy the main, dominant position, and the methods of protection are secondary, subordinate.

The direct action of the mechanism for protecting rights and freedoms is as follows: the subject of human rights activity, being in certain legal conditions (form of protection), applies one or another established means or method of protection (method of protection).

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It is necessary to distinguish between four levels of protection of rights and freedoms [9], and, therefore, four types of guarantees, where the territory of their application serves as the criterion for delimiting, these are:

- international guarantees;
- domestic (national) guarantees;
- regional guarantees of the rights and freedoms of man and citizen, ensuring the implementation of rights and freedoms in the territory of a single region.

Regional and local guarantees are closest to the person, first of all, citizens should contact them in case of violation of their rights and freedoms. As practice shows, people are not inclined to choose these types of guarantees, due to lack of information, lack of knowledge of their capabilities and very often a negative attitude towards regional and local authorities. Therefore, they are increasingly choosing national and, more recently, even international guarantees for the protection of violated rights and freedoms.

Each type of guarantee corresponds to a specific mechanism for the protection of rights and freedoms, namely: international, national, regional and local.

The international mechanism for the protection of human rights operates both at the level of the world community (planetary level) and at another multilateral level (CIS, European Union, African Union, etc.). The national defense mechanism includes the protection of rights and freedoms within a particular state. The local mechanism for the protection of human and civil rights and freedoms can be implemented at the municipal level.

Between these mechanisms, there is a certain relationship and subordination. The local mechanism for the protection of rights and freedoms must comply with the regional standard of rights and freedoms.

The national mechanism for the protection of human and civil rights and freedoms must comply with the international human rights standard established primarily in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The compliance of the national mechanism for the protection of human and human rights and freedoms with the international human rights standard stems from those obligations, fixing the principle of priority of generally recognized principles and norms of international law in clause 3 of article 6 of the Constitution of the Kyrgyz Republic. [10]

The same principle of compliance of the mechanism for protecting the rights and freedoms of man and citizen in the Kyrgyz Republic with the standard of rights and freedoms established by the state.

Thus, the mechanism of protecting the rights and freedoms of a person and a citizen should be understood as a system of certain means and methods

of protection, with the help of which human rights activists protect violated rights and freedoms while in a certain life situation.

Lawyers understand the function of protecting human rights in the constitutional aspect in different ways. For example, S. S. Alekseev [11] wrote that “the protection of law is a state-compulsory activity aimed at restoring a violated right, ensuring the fulfillment of a legal obligation”.

O. E. Leist [13] believed that this concept, if preventive measures are excluded from it, is essentially the same as restorative sanctions.

A. N. Golovistikova [12] notes that the protective function of the state is in demand in connection with the need to further strengthen the system for protecting human rights and freedoms, which is constituted as a state’s priority duty.

The Kyrgyz Republic guarantees each person protection against arbitrary or unlawful interference in his personal and family life (Article 36), against encroachment on his honor and dignity (Article 30), and against violation of confidentiality of correspondence and telephone conversations (Article 29).

Thus, constitutional legislation refers to personal freedom and personal life of citizens.

However, these constitutional formulas do not receive a comprehensive and deep understanding, and even more so, subsequent support.

The Constitution of the Kyrgyz Republic, reflecting the mechanism of constitutional protection of the individual in the Kyrgyz Republic, should be based on such principles as:

- belonging to a person of fundamental rights and freedoms from birth and their inalienability;
- recognition of human rights and freedoms in force;
- legal equality (equality) of citizens, including the equality of all before the law and the court, equal rights and freedoms for man and woman, equality regardless of origin, gender, race, nationality, language,
- religion, political and religious beliefs, conditions and circumstances of a personal or public nature;
- the exercise of the rights and freedoms of man and citizen, not violating the rights and freedoms of others, the interests of society and the state;
- individual freedom;
- compliance of the status of a person with internationally recognized principles and standards;
- Guaranteed constitutional status of the individual, his rights and freedoms.

In our opinion, in Kyrgyzstan more attention needs to be paid to resolving issues of the rights and freedoms of citizens, and if disagreements and contradictions arise, try to reach a consensus. In modern society, caring for the disadvantaged, for those who are not able to protect themselves, is an

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integral function of the state. The protection of the rights and freedoms of citizens belonging to socially

vulnerable groups should be one of the priorities of the Kyrgyz Republic's human rights policy.

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