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Zoryana Dobosh

Lviv Polytechnic National University,
Educational and Scientific Institute of Law,
psychology and innovative education
Candidate of Jurisprudence,
Associate Professor of the Department of Civil Law and Procedure
zoryana.a.dobosh@lpnu.ua
ORCID ID: <https://orcid.org/0000-0002-3680-7207>

ADMINISTRATIVE AND LEGAL GUARANTEE OF THE RIGHTS AND LEGITIMATE INTERESTS OF UKRAINIAN CITIZENS IN THE FIELD OF PUBLIC ADMINISTRATION IN UKRAINE

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The article is devoted to the problem of administrative-legal guarantee of the rights and legitimate interests of Ukrainian citizens in the sphere of public administration in Ukraine.

Special attention is devoted to the analysis of the rights and legitimate interests of a person in the field of public administration as a subject of administrative and legal guarantees in Ukraine.

It has been established that the source of guaranteeing individual rights in the field of public administration is the state. Other institutions of the state acting as subjects of administrative and legal guarantee of the rights of the individual in the field of public administration, broadcasting his will, endowed by the state with special competence, effective means of guaranteeing the rights of the individual.

The article analyzes the peculiarities of the combination of public interest and private legitimate interests of individual individuals, the theory of the dualism of private and public interest within the framework of subjective public law, presents an analysis of the category «public legitimate interests», and the structure of subjective public rights. It was found that the category of subjective law in the public legal sphere is wider than the category of subjective public law.

Particular attention is paid to the types of subjective public human rights, since their satisfaction is the most important subject of administrative and legal guarantee by the state, in particular through the mechanism of judicial control.

Special attention is devoted to the analysis of public-civil, public-political, public-social rights. Positive and negative public, general and special rights in the researched area are singled out.

It was noted that the practical implementation of administrative and legal guarantees of individual rights requires the involvement of a wide range of state institutions endowed with the necessary competence to create conditions, implement means aimed at guaranteeing the possibility of implementing individual rights and, if necessary, their protection.

The features of guaranteeing the legal rights of a person, the system of such guarantees are characterized.

It is emphasized that while guaranteeing a wide range of legal opportunities, the state should focus on developing a clear mechanism for countering the abuse of law in the field of public administration in wartime conditions.

Keywords: administrative and legal guarantee; rights of citizens; legitimate interests of citizens; subjective public law; public legal relations; public interest; public management.

Formulation of the problem. The system of guaranteeing the rights and legitimate interests of citizens in the field of public administration is a reflection of interconnected conditions, factors, tools (means), which are a guarantee of the realization of the rights and legitimate interests of citizens in the field of public administration. The entire system of tasks, functions and principles of public administration is evidence that the rights and legitimate interests of the individual, which are the basis of the entire administrative system, are the driver of the transformation of the public administration system on the basis of service and people-centeredness. The rights and legitimate interests of a person in the field of public administration are the most important subject of administrative and legal guarantees in Ukraine. A scientific study of the legal opportunities of citizens in the field of public administration and the instruments of their guarantee is a guarantee of their proper implementation and a condition for the effective practice of their protection.

Analysis of the study of the problem. The problems of administrative-legal guarantee of the rights and legitimate interests of Ukrainian citizens in the field of public administration in Ukraine are extremely relevant in the process of administrative reform in our country. Despite the relevance of this problem, the scientific community does not sufficiently investigate the specifics of the basic rights and legitimate interests of the individual in the field of public administration and the specifics of their administrative and legal guarantee in Ukraine. Some aspects of the problem were covered by Ukrainian scientists in scientific publications. Among the scientists whose works relate to the specified problem are V. Averyanov, M. Hnatenko, A. Degtyar, O. Degtyar, H. Kalashnikova, V. Kolpakov, T. Matselyk, R. Melnyk, O. Sinyavska, I. Pit, A. Chub. However, the need for modern reform of the current legislation and practice of public administration in Ukraine requires a comprehensive scientific analysis of issues of administrative and legal guaranteeing the rights and legitimate interests of Ukrainian citizens in the sphere of public administration in Ukraine.

The aim is a scientific analysis of the basic rights and legitimate interests of a person in the field of public administration and the peculiarities of their administrative and legal guarantee in Ukraine.

Presenting main material. The modern system of public administration is oriented towards the administrative and legal guarantee of the realization and protection of the rights and legitimate interests of the individual. Such a guarantee combines interrelated conditions, factors, normative, institutional and procedural tools (means) of legal influence, which are implemented by a wide range of public legal institutions and their officials on the basis of the rule of law, legality, systematicity, and social justice.

The subjective rights of a person determine the extent of the possible (permitted) human behavior provided and guaranteed by the state thanks to its enshrining in legal norms.

In general, the public sphere reflects an integrated structure that is a combination of three main segments, in particular social, economic and political [1, p. 16]. Therefore, the rights and legitimate interests of a person in the field of public administration are legal opportunities, which, for the most part, have a social, economic and political nature.

Decisive in public-legal relations is the combination of public interest and private legal interests of individual individuals. At the same time, for their implementation, the state creates appropriate economic,

social and political conditions, for example, conditions for exercising the right to public service, participation in the election process, referendum, etc.

The diversity of rights and legitimate interests of people in society, the heterogeneity of interests of social groups require the formation of a unified system of measures to take them into account in the process of strategic development of the state. Developed democracies use the «Public Policy» model to achieve this result. It is the basis of the implementation of tools for taking such rights and interests into account by the state, and is based on certain procedural requirements [2].

The «Public Policy» model is formed on the basis of openness and transparency, the involvement of broad sections of the population, public organizations, experts, and scientists in the discussion of projects of public and legal decisions [3].

Thus, in developed countries, special attention is paid to the field of public legal relations, various models and technologies are used for maximum involvement of the public in the field of public administration in order to take into account the interests of various social groups and individuals, and guaranteeing public human rights becomes the main duty of the state.

The possibility of implementing subjective private law in public-legal relations and the targeting of the right to satisfy the subjective public interest led to the differentiation of the categories «subjective law in the public-legal sphere» and «subjective public law» in the scientific literature. Some scientists believe that the first category is broader, since such a right is a form of realization and protection of private and related public interest, or only public interest [4, p. 46–47]. Instead, subjective public law concerns the implementation and protection of a combination of private and public interest in relations with public administration bodies.

The theory of the dualism of private and public interest within the framework of subjective public law originates from the German theory of the «protective norm». The author of this theory, O. Büller, insisted that the rule of law is the basis of the formation of subjective public rights when it eliminates the use of free discretion of public administration bodies, if it serves to protect the interests of a person or groups of people who can demand from public administration bodies to commit certain activities for the realization of their legitimate interests. The combination of a protective norm and a person's legitimate interest in protecting his violated subjective public right serve as basic conditions for realizing the possibility of filing an administrative lawsuit [5, p. 164–166].

Also, in order to identify the possibility of the emergence of a subjective public right, it is necessary to give an answer to the question of whether there is a legal norm that obliges a public administration body to perform a certain activity, and whether there are norms that determine the possibility and procedure for the realization and protection of a legitimate interest a private person? [6, p. 119].

The emergence of subjective rights among the participants of administrative legal relations is a guarantee of their satisfaction of public and private interests; formation of administrative legal entity; embodiment of active behavior in administrative legal relations. All their activities are defined by the limits of administrative and legal norms [7, p. 191–192].

Public legitimate interests go beyond personal interests, are the embodiment of the interests of the entire society, bring administrative-legal relations to the level of public-legal categories, including public power, public administration, local self-government, people's power. Speaking in normative legal acts about the presence of public interest, the legislator uses such terms as «state interests», «territorial community interests», «national interests». These are actually varieties of public interests, determined in view of the specifics of legal protection [6, p. 37].

The implementation of such a subjective public right, such as the right to strike, despite the satisfaction of the public legitimate interest in providing the company's employees with decent working conditions and wages, makes it possible to satisfy the private legitimate interest of an individual employee in increasing his wages, which cannot be said about the right to appeal to the court for the purpose of inclusion or exclusion from the list of voters in accordance with the Civil Code of Ukraine, implementation by public management bodies of the protection of natural objects, historical and cultural monuments. In the

latter case, no private interest arises, and the subjective right is one that arises in the public legal sphere without its formation.

Taking into account all of the above, it can be stated that the category of subjective law in the public legal sphere is wider than the category of subjective public law. It is appropriate to distinguish these categories depending on the concentrated expression in them of the dualism of private and public legitimate interest of the subject of administrative-legal relations. Subjective public law expresses the totality of private and related public legal interest of an individual. However, the system of subjective human rights in the public legal sphere, in addition to subjective public rights, also includes other rights that are a form of realization and protection of exclusively public interests. The latter act as a sublimated expression of the needs, will of the population, of all citizens or certain groups, an expression of the «will of the people» (interests in the protection of state borders, compliance with customs regimes, ensuring law and order, environmental safety, guaranteeing state security, etc.). Such interests realize the «secondary» benefit of the individual in relation to life in the conditions of the effectiveness of the entire mechanism of public administration in the state, legality and law and order, and, as a result, the guaranteed realization of subjective legal opportunities in such conditions in social, tax, customs and other spheres. However, in the objective orientation of subjective law in the public legal sphere, the satisfaction of the subjective legitimate interest is secondary to the satisfaction of the interest of the social community, group, society in general.

Subjective public rights are legal possibilities, which, for the most part, have a social, economic and political nature, determine the extent of the state's provision and guarantee due to the enshrining in legal norms of possible (permitted) human behavior.

The peculiarity of subjective public rights is that they always correspond to subjective administrative and legal duties. The latter are a reflection of the measure of proper behavior of a participant in public-law relations imposed by the state and enshrined in the norms of current administrative legislation, which is ensured by state coercion [8, p. 118].

Also, among the characteristics of these rights, it should be noted that they are the basis of the formation of public-legal relations, as a rule, regulated by the norms of constitutional and administrative law, they are implemented within the framework of administrative-legal relations.

Among the important features, it should be noted the specificity of the protection of these rights, the existence of a system of administrative proceedings and a special procedural form of its implementation. Many subjective rights are not characterized by the possibility of executing an order, in particular, transferring these rights to other persons (refers to the right to public service, the right to vote) [9, p. 68].

Subjective public law is manifested in the formation of specific relations according to the «private person – public administration» model. The emergence of such a right is possible provided that a mandatory legal norm regarding the legal duties of the public administration is established. The regulatory fixation of the procedure for the implementation and protection of such a right is essential [6, p. 68].

The structure of subjective public rights is presented by T. Matselyk as a combination of legal possibilities for carrying out one's own actions, obtaining public services, making demands regarding the appropriate behavior of other persons (obligees), regarding their protection and protection [9, p. 68].

Implementation and protection of the subjective public right of an individual requires consideration of procedural and material aspects. Very often, the means of its protection is an administrative lawsuit against the state, public administration bodies. It is important that a legitimate interest (private, public) is the basis of such a right and determines the content of the subjective right itself, and the latter turns into a form of protection of this interest [10, p. 117].

Particular attention should be paid to the types of subjective public human rights, since their satisfaction is the most important subject of administrative and legal guarantee by the state, which is ensured through the mechanism of judicial control.

V. Kolpakov singled out socio-economic rights among this type of rights (the right to education, the right to work, the right to health care); political rights (related to freedom of rallies, assemblies, religion,

opinion, participation in political and other formations and organizations, contesting the activities of public administration bodies, participating in the election process, etc.); rights that are related to the satisfaction of a person's own needs [11, p. 158–159].

A. Strelnikov proposed to distinguish three categories of subjective public rights of an individual. It singles out the rights recognized by the state as related to the individual, testify to their non-property content and cannot be limited by the state (secrets of correspondence, freedom of religion, conscience, thought, speech, press, movement, inviolability). Individual rights to positive services (for education, medical care, etc.) constitute a separate group. The third group is united by subjective public rights related to the individual's participation in the management of state affairs. The author refers to the latter as the right to participate in a referendum, the opportunity to elect and be elected to public administration bodies [12, p. 243].

There is also a proposal in the literature to separate the rights that relate to the involvement of the public in public administration, and those that make it possible to satisfy the needs of citizens regarding the use of material, cultural and other benefits; rights related to protection [13, p. 52–55].

Public and civil rights are natural, inherent to a person by virtue of his existence, inalienable, connected with his biological existence. They are the main reflection of human freedom and autonomy. The specificity of their implementation in the public legal sphere is manifested in the active involvement of public administration bodies in ensuring their implementation and protection. Among these, it should be noted the right to freedom and personal integrity, the secrecy of telephone conversations and correspondence, to choose a place of residence, to collect and disseminate information, a safe environment, and fair protection in the field of public administration.

Public and political rights allow a person to be involved in public management processes in the state, public and political life, in the development and improvement of the system of public administration in Ukraine. Thus, an individual can participate in the management of national affairs, make proposals to improve the work of public administration bodies, send collective and individual appeals to them, has the right to demand the effective implementation of their functions by public administration bodies, in particular, the use of budget funds by public administration bodies, the conduct of public procedures procurement, use access to various spheres of public service, hold peaceful meetings, rallies, demonstrations, elect and be elected.

The basis for the realization of public and political rights is Art. 38 of the Constitution of Ukraine. The corresponding article enables citizens to be involved in the management of state affairs. Part of this right is participation in various types of referendums, involvement of the public in the election process.

Public and social rights and their provision are an indicator of the quality of the involvement of public administration bodies in the social security of a person, the guarantee of a decent standard of living by public administration bodies (the functioning of the system of social security, pension security, mandatory insurance, etc.), the development of the labor market, access to education, medicine, etc. It is the quality of the functioning of social public legal institutions that is the key to the formation of a system of social protection of the population.

An important criterion for the differentiation of subjective public rights is the manifestation of individual freedom and the involvement of the state in the process of realizing such rights. According to this criterion, positive and negative rights should be distinguished. The implementation of the first requires the implementation of the corresponding duty of public administration bodies to implement certain active, positive activities (the right of citizens to send collective and individual appeals to public administration bodies presupposes their consideration by these public legal institutions and the adoption of the necessary administrative decision). Instead, negative rights correspond to the obligation of public administration bodies not to make decisions regarding the method and order of their implementation. Their activities regarding these rights are implemented exclusively in the sphere of creating conditions for the realization of such a subjective public right and counteracting possible violations of it (the right to hold meetings, demonstrations).

The criterion of the degree of distribution of subjective public rights allows distinguishing general and special rights. The main characteristic of general rights is that they belong to all individuals who enter into public legal relations. Instead, special subjective public rights are determined by the special characteristics of a person (his gender, age, social or other position in states and society). For example, the subjective public rights of minors, civil servants or military personnel, pensioners, and disabled persons are separately identified.

Guaranteeing a person's legal rights serves as a powerful external mechanism for applying certain restrictions to government institutions, opposing their expansion in various spheres of life, and trends in the groundless self-expansion of the destructive imperative influence of government institutions on people's lives [14, p. 138].

The source of guaranteeing individual rights is the state. Its functions in this area are fixed by Art. 3, 22, 42, 49, 51, 53 of the Constitution of Ukraine. All other institutions of the state acting as subjects of administrative and legal guarantee of the rights of a person in the sphere of public administration, broadcasting his will, endowed by the state with special competence, effective means of guaranteeing the rights of a person.

The guarantee system covers a wide range of tools. O. F. Skakun presented the general system of guarantees. She emphasized that such a system includes socio-economic, moral, political instruments (means, methods, conditions) aimed at the implementation, protection and protection of such legal opportunities [15].

As other domestic authors claim, it is advisable to divide the entire set of such guarantees into general social ones (covering economic, political, organizational) [16, p. 207] and legal guarantees (formed from specific conditions, methods, and means, thanks to which a generally mandatory procedure for implementing the legal rights of a person, their protection, protection is established in the state) [17, p. 555].

The practical implementation of administrative and legal guarantees of individual rights requires the involvement of a wide range of state institutions endowed with the necessary competence to create conditions, implement means aimed at guaranteeing the possibility of implementing individual rights and, if necessary, their protection.

Subjects of the administrative-legal guarantee of the legal rights of citizens in the field of public administration, entering into administrative-legal relations regarding the formation of conditions and the implementation of methods and means of an administrative-legal nature regarding the maintenance of procedures for the realization of legal opportunities, countermeasures against violations in the field of public administration, restoration of public-legal opportunities of these persons, act as subjects of administrative-legal guarantee of citizens' rights in the field of public administration.

Conclusions. The rights and legitimate interests of a person in the field of public administration are an important subject of administrative and legal guarantees in Ukraine. Guaranteeing a wide range of legal opportunities requires coordinated rule-making, law enforcement and human rights protection activities of public administration bodies. A feature of subjective public law is the combination of public and private legal interests of individual individuals, while the satisfaction of the subjective legal interest is secondary to the satisfaction of the interest of the social community, group, society in general. The most important criteria for the classification of these rights are the sphere of public life in which the public and private interest of a person is manifested, the manifestation of the freedom of its bearer, the legal status of the bearer of the subjective public right and the degree of distribution of these rights. While guaranteeing a wide range of legal opportunities, the state should focus on developing a clear mechanism for countering the abuse of rights in the field of public administration in wartime conditions.

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Зоряна Добош

Національний університет «Львівська політехніка»,
доцент кафедри цивільного права та процесу

Навчально-наукового інституту
права, психології та інноваційної освіти,

кандидат юридичних наук, доцент
zoryana.a.dobosh@lpnu.ua

ORCID ID: <https://orcid.org/0000-0002-3680-7207>

АДМІНІСТРАТИВНО-ПРАВОВЕ ГАРАНТУВАННЯ ПРАВ ТА ЗАКОННИХ ІНТЕРЕСІВ ГРОМАДЯН УКРАЇНИ У СФЕРІ ПУБЛІЧНОГО УПРАВЛІННЯ В УКРАЇНІ

Стаття присвячена проблемі адміністративно-правового гарантування прав та законних інтересів громадян України у сфері публічного управління в Україні.

Особливу увагу присвячено аналізу прав та законних інтересів особи у сфері публічного управління як предмета адміністративно-правового гарантування в Україні.

Встановлено, що джерелом гарантування прав особи у сфері публічного управління є держава. Інші інституції держави, що виступають суб'єктами адміністративно-правового гарантування прав особи у сфері публічного управління, транслюють її волю, наділені державою спеціальною компетенцією, ефективними засобами гарантування прав особи.

У статті проаналізовано особливості поєднання публічного інтересу та приватних законних інтересів окремих фізичних осіб, теорії дуалізму приватного та публічного інтересу в рамках суб'єктивного публічного права, представлено аналіз категорії «публічні законні інтереси», структуру суб'єктивних публічних прав. З'ясовано, що категорія суб'єктивне право у публічно-правовій сфері є ширшою за категорію суб'єктивне публічне право.

Особливу увагу присвячено різновидам суб'єктивних публічних прав людини, оскільки їхнє задоволення є найважливішим предметом адміністративно-правового гарантування з боку держави, зокрема й через механізм судового контролю.

Особлива увага надана аналізу публічно-громадянських, публічно-політичних, публічно-соціальних прав. Виокремлено позитивні та негативні публічні, загальні та спеціальні права у досліджуваній сфері.

Відзначено, що практична реалізація адміністративно-правових гарантій прав особи потребує залучення широкого кола інституцій держави, наділених потрібною компетенцією задля формування умов, реалізації засобів, націлених на гарантування можливості втілення прав особи в життя та, у разі потреби, їхнього захисту.

Охарактеризовано особливості гарантування правових можливостей людини, систему таких гарантій.

Наголошено, що, здійснюючи гарантування широкого спектру правових можливостей, держава повинна зосередитися на виробленні в умовах війни чіткого механізму протидії зловживанню правом у сфері публічного управління.

Ключові слова: адміністративно-правове гарантування; права громадян; законні інтереси громадян; суб'єктивне публічне право; публічні правовідносини; публічний інтерес; публічне управління.