

Guarantees of rights and freedoms of minors

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Abstract – Guarantees of rights and freedoms of minors are fundamental, essential tools that provide constitutional rights and civil liberties in a legal state. The article considers such guarantees as: political, socio-economic and legal. It is accentuated that the effectiveness and completeness of the realization of fundamental rights and freedoms is directly proportional to whether the domestic law complies with generally recognized principles and norms of international law.

Keywords – guarantees, rights, minors, state, legal status.

I. The concept of guarantees

The concept of "guarantee" covers the whole set of objective and subjective factors, aimed at the practical realization of rights and freedoms, to eliminate the possible obstacles to their full or proper implementation [1, p.555]. The imbalance of the mechanism of the implementation of the rights and freedoms of minors leads to their ineffectiveness, so the set of guarantees is especially important to ensure the "basis" of the legal status of minors. The proclamation of the rights of minors necessitates their functionality, which is provided by the guarantees, as a significant component of the legal status.

The guarantees of the rights of a minor are determined primarily by the guarantees of human rights and freedoms. Most scientists recognize that the guarantees are socio-political and legal phenomenon that is characterized by: 1) cognition, because it allows to reveal theoretical knowledge about the object of their (guarantees) influence, to obtain practical knowledge about the social and legal policy of the state; 2) ideology, because it is used by political authorities as a means of popularization of democratic ideas inside and outside the country; 3) practicality, because it is recognized as a tool of jurisprudence, a prerequisite for satisfying the social benefits of a person. Based on this, the authors define guarantees as a system of socio-economic, political, legal organizational preconditions, conditions, means and methods that create opportunities for the personality to fulfill his/her rights, freedoms and interests [2, p.275].

II. Political and socio-economic guarantees of minors' rights.

To political guarantees, we will include the features of the construction and functioning of the entire political system of society, its principles, subjects and the peculiarities of their interaction, since the whole set of political factors of social and public life directly affects the guarantee of the rights of the minor.

In general, political guarantees are summarized with the participation of citizens in the exercise of state authority through such direct forms as elections, referendums,

meetings, and other public forms of collective action (hikes, rallies, pickets, petitions) and individual voluntary representations of citizens; it also includes an effective mechanism for the distribution of state authority, multi-party system, citizen participation in governance, and the absence of usurpation of power. P. Rabinovich therefore proposes to include to political guarantees: the democratic structure of society; a pluralist, open political system; the presence of an extensive network of public associations, in particular, the various branches of society; democratic electoral system, etc. [3, p.8].

Socio-economic guarantees of the rights and freedoms of minors cover a set of economic factors that promote full and unhindered realization of rights and provide social protection of the specified demographic group.

Economic guarantees are intended to create a proper material wealth, thus ensuring the economic independence of individuals in society. The minor may own property, is provided with the opportunity to exercise the right to work, the right to freely dispose of his own income, to engage in entrepreneurial activity, that is, state guarantees are aimed at providing a person who has not reached the age of majority, yet to gain economic independence. On the one hand, the state refers to the obligation of parents to support children under adulthood, at the same time does not limit the possibility of economic self-formation, clearly defining the legal limits of the protection of these rights through the establishment of special conditions of work of minors, a number of labor guarantees that make it impossible the excessive exploitation of minors in the labor sphere. Also, the state protects the property of a minor, since all legal actions committed with respect to property should not violate the legitimate interests of a minor, therefore a minor may be deprived of an independent right to carry out legal actions without the permission of parents or authorities of guardianship. We emphasize that the institution of emancipation clearly demonstrates the principles of the legal policy of the modern state in the sphere of minors.

The international standard of social purpose of the state is formulated in Art. 25 of the Universal Declaration of Human Rights, which stipulates that everyone has the right to such a standard of living, including food, clothing, housing, medical examination and social services that are necessary to maintain the health and well-being of him/herself and his/her family, as well as the right to maintenance in case of unemployment, illness, disability, widowhood, old age or other loss of livelihood, for reasons independent of him/her. Social guarantees of the state reveal its social security and orientation. State social guarantees are intended to ensure the minimum living conditions for all members of society. Minors are included in the category of people who need social protection, especially for those who are deprived of the opportunity to receive material support from their parents. First of all, this considers orphans and children deprived of parental care. In Ukraine, on January 1, 2016, 73 182 people were officially enrolled as such children.

Social guarantees are also a priority for minors with disabilities. State social guarantees should create fair

opportunities not only for biological existence, but also for the development of minors. Establishment of rehabilitation and treatment centers, proper level of social benefits, benefits and guarantees and new types of assistance with the definition of the real sources of their funding for provision of medical services, the possibility of obtaining an appropriate level of education, in particular inclusive, adaptation of persons with disabilities in society are important tasks of the state.

Social guarantees in the field of minors' rights:

– protection of motherhood, parenthood, family by the state;

– ensuring the proper level of existence and development of minors;

– availability of social guarantees for minors who require special state support, namely: minor orphans and children deprived of care, persons with disabilities and minors living in low income families;

– functioning of the institutional mechanism of state authorities, implementing the social policy of the state.

From information provided at the parliamentary hearings in 2015-2016 within the framework of the social sector reform program, social programs for supporting children in Ukraine have been reduced. The funding of social work specialists who worked on preventing social orphanhood in communities due to state subsidies from local budgets was stopped. Also, the financing of sanatorium and spa treatment, health improvement and rest for children, children's and youth sports schools at the expense of the Social Insurance Fund for temporary disability; large families, family-type orphanages are exempted from paying housing and communal services, orphans, children deprived of parental care, lost the right to enter outside the competition to higher educational institutions; cancelled the free meals for pupils of 1-4 grades of secondary schools [4].

III. Legal Guarantees

Legal guarantees are those that have their own legal objectives. G. Jellinek highlights social, political and legal guarantees of subjective public rights, noting that "... legal guarantees differ from their social and political by their actions, which can be properly foreseen" [5, 745-747]. They represent a complex system of interacting elements that allow organizing a comprehensive assurance covering various stages of the implementation of rights and obligations, protection from encroachment, the restoration of violated legal rights. Legal guarantees of the rights of minors are means of material, legal and procedural (organizational) nature, which are intended for the implementation and protection of the rights of minors enshrined in the constitution and legislation.

The complex of general legal guarantees for ensuring the legal status of minors will be considered as normative-legal guarantees, on the one hand, and organizational-legal (or institutional-legal) guarantees – on the other. Some scholars [6] believe that the system of legal guarantees is based on a two-level scheme – the international level and guarantees of the domestic level, where international legal guarantees are in the complex of global and regional international conventions (recommendations) and are provided by the activities of interstate associations and their bodies.

Therefore, a set of legal rights of minors includes normative-legal (international and national) and organizational-legal guarantees.

Conclusions

Guarantees of the rights and freedoms of minors are special guarantees of their rights, a system of norms, principles, means and conditions that collectively ensure the exercise of the rights, freedoms and legal interests of a juvenile person.

The value of the guarantees of the rights of minors is that they provide their rights and freedoms not through the methodology of formal priority, but through the achievement of the maximum completeness of rights and freedoms. The rights of minors without guarantees are in a static state, guarantees give them an activity characteristic, that is, provide a functioning dynamic.

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