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Public services in the field of social protection of the population: international experience, administrative and penal aspects

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Abstract

The issue of optimizing the mechanism for providing public services in the field of social protection of the population due to the ongoing armed conflict in Ukraine on the part of Russia (from 2014 to the present), as a result of which internally displaced persons need to solve a number of urgent needs both in European countries (Poland, Germany, Bulgaria, Romania, Moldova, etc.), including related to their accounting in these countries. In this sense, the objective of this editorial is twofold, on the one hand, to present volume 40, number 74 of Political Questions and, on the other, to highlight the concept and types of guarantees of ensuring legality concerning provision of public services in the sphere of social protection of population. It is concluded that the following types of guarantees of ensuring legality concerning provision of public services in the sphere of social protection of population in Ukraine have been justified: appeal of decisions, actions or inaction of public administration subjects on the provision of public services in the sphere of social protection of population in court (administrative proceedings); control over activities of public administration subjects concerning provision of public services in the sphere of social protection of population.

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Keywords: service; public service; appeal; responsibility; social protection of the population.

Servicios públicos en el ámbito de la protección social de la población: experiencia internacional, aspecto administrativo y penal

Resumen

La cuestión de optimizar el mecanismo para la prestación de servicios públicos en el campo de la protección social de la población debido al conflicto armado en curso en Ucrania por parte de Rusia (desde 2014 hasta el presente), como resultado de lo cual los desplazados internos deben resolver una serie de necesidades urgentes en países europeos (Polonia, Alemania, Bulgaria, Rumanía, Moldavia, etc.), incluidas las relacionadas con su contabilidad en estos países. En este sentido, el objetivo de este editorial es doble, por un lado, presentar el volumen 40, número 74 de Cuestiones Políticas y, por el otro, resaltar el concepto y tipos de garantías de aseguramiento de la legalidad en la prestación de los servicios públicos en el ámbito de la protección social de la población. Se concluye que se han justificado los siguientes tipos de garantías para responder a la legalidad en relación con la prestación de servicios públicos en el ámbito de la protección social de la población en y de Ucrania: apelación de decisiones, acciones o inacción de sujetos de la administración pública sobre la prestación de servicios públicos en el ámbito de la protección social de la población en los tribunales (procedimientos administrativos).

Palabras clave: servicio; servicio público; apelación; responsabilidad; protección social de la población.

Exordium

In the modern world, the degree of security of rights and freedoms of individuals in various spheres, in particular in the sphere of public services, is an important indicator of the level of civilization achieved by the society and the state. For everyone to actually exercise his or her subjective rights in Ukraine, it is important to determine the effective mechanisms that will ensure the possibility for citizens to exercise their rights in the modern conditions of political and economic transformations. It is effective juridical guarantees that can ensure the practical implementation of each person's rights, including rights of receiving public services in Ukraine.

In order to solve modern problems in the state and to fulfill orders of the Cabinet of Ministers of Ukraine by the Ministry of Economy of Ukraine the Strategy of Ukraine's Development "Ukraine 2020: the Strategy of National Modernization" was developed in 2014; this strategy was also reflected in the Decree of the President of Ukraine "On the Strategy of Sustainable Development "Ukraine-2020" dated 12 January, 2015. It envisages 60 reforms, special programs in various areas, including introduction of quality guarantees of ensuring legality concerning provision of public services; through execution of these reforms Ukraine will be prepared to apply for membership in the European Union.

The System of public services provision in Ukraine, in particular, guarantees of legality concerning their provision, is currently facing serious problems in providing objective, timely, fair and, most importantly, high-quality services to the consumer (natural or legal persons). These problems include numerous gaps and conflicts of legislation applied by the subjects of ensuring legality of public services provision; the mechanism of public services provision; absence of effective control over public services provision; problems of legal culture of officials entrusted with powers to ensure legality concerning provision of public services; peculiarities of prosecution for poor quality provision of public services, etc. The above problems cause impossibility of proper implementation of existing guarantees of ensuring legality concerning provision of public services.

When considering the foreign experience of providing public services in the field of social protection of the population, it is necessary to pay attention to the fact that the world practice on this issue comes from the social policy models chosen by the government, which are the basis of state activity. Some scientists distinguish four main types of organization of social protection systems: continental, social-democratic (Scandinavian), universal (Anglo-Saxon) and southern European, others - three types: continental, Anglo-Saxon and Scandinavian.

The criterion for classifying countries by type is the way of organizing social protection, which the state prefers (social assistance or social insurance), as well as the form of providing public services in the field of social protection of the population (private or state). In countries with a continental model of social protection (Germany, Austria, the Netherlands, Belgium), the principle applies, according to which the amount of social assistance depends on a person's success in work. The social-democratic model developed on the basis of the principle of social solidarity and the responsibility of society and the state for the well-being of every member of society, but later the system underwent reformation and contractual forms of provision and social protection were introduced.

The purpose of the article is to highlight the concept and types of guarantees of ensuring legality concerning provision of public services in the sphere of social protection of population.

1. The concept and types of guarantees of ensuring legality concerning provision of public services in the sphere of social protection of population

As a matter of fact, certain “means and methods” become juridical guarantees only through their legal form and through their enshrining in legal norms. The term “juridical guarantees” itself indicates their legal basis. However, the guarantee of security consists primarily in exercising rights and duties provided for in the current legal norms. It is generally known that the norm by itself cannot cause certain legal results; the latter are achieved through legal activity. The activity should be understood as exercising subjective rights and fulfillment of legal obligations imposed by the law on the relevant subjects of labor law relations (Hida, 2011).

Juridical guarantees are an independent form in the system of guarantees. The word “guarantee” (French. “*garantie*” – to provide) means “warranty”, “a condition that ensures something”. In legal literature sources guarantees of rights and freedoms are understood as a) a set of subjective and objective factors, b) a system of socioeconomic, political, moral, legal and organizational prerequisites, conditions, means and methods. The term “factors” may not be used to indicate guarantees, since it is more likely to mean the nature of phenomena and factors. The second definition does not really reveal the meaning of guarantees, but only lists their types. On the other hand, there is no doubt that correct definition of guarantees is “conditions, means and methods” which ensure the realization and comprehensive protection of rights (Kashanyina, 1981).

Guarantees of legality are a complex of interrelated objective conditions and subjective factors as well as special means that provide the regime of legality. Structurally, guarantees of legality are divided into general ones and special ones (Kelman, 2003).

In view of this, we consider it expedient to distinguish two elements in the structure of guarantees of legality - legal norms and activity of subjects. For example, the rule of law establishes specific obligations for a subject of legal relations; and fulfillment of these obligations (that is, activity of this subject) will ensure realization of rights of another subject. In its turn the law acts as a legal basis for legal activity, and juridical activity is a means of implementing the law.

Thus, in general legal meaning M. V. Kravchuk notes that it is correct to define juridical guarantees as a complex of “means and methods” (Kravchuk, 2013).

So, V. M. Soroka divides public services into the following groups:

- Protection: of life, property, environment, intellectual property, etc.
- Social protection: of children, elderly people, people with special needs, unemployed.
- Registration, licensing: changes in the public status, the status of objects and subjects. formation of communities, organizations; certain types of activity.
- Everyday life activities: health care; provision of communal, household spheres; agrarian issues, etc.
- Communication: email, telecommunications, Internet; transport; mass media;
- Spiritual and cultural self-expression: recreation, cultural and mass events; physical culture and sport (Soroka, 2007).

A. Y. Shastytko proposes to view the category of “public services” through their main task, namely increasing the efficiency of public administration. He developed two approaches to understanding this concept – empiric one and theoretical one. Within the framework of the first approach, public services are services provided (in connection with the performance of official functions) by executive authorities and their institutions in direct interaction with citizens. According to the second approach, public services are considered by the scientist as services that have properties of private goods, but are directly connected with the specification and protection of property rights of individuals (Shastytko, 2004).

V. B. Avveryanov suggests the following signs of public services: 1) they provide activities of general significance; 2) they have an unlimited range of subjects using them; 3) they are executed either by a body of state and municipal power, or by another entity; 4) they are based on both public and private ownership (Avveryanov, 2002).

It should be noted that the first of the above signs of public services demonstrates presence of public interest in implementation of such activities and allows us to conclude that regardless of the subject (state body, municipal body, non-governmental organization) in each specific case public services are provided by a public authority obliged to ensure their implementation. If there are people in the private sector willing to provide public services of this kind, or it is not within the power of a private organization for established reasons then in this case the state, municipal body is obliged to undertake implementation of such a service which must be provided because of its social significance.

For example, garbage collection, waste disposal, water supply and other similar services should be provided regardless of the interest of certain entities. And if there is no interest in such activity, then the public authority is obliged to either form such interest, or simply undertake implementation of such a public service. Therefore, the sphere of socially significant services should always be

in the spotlight of public authorities, regardless of the subjects these services are provided by.

Thus, public services are all services provided by the public sector, as well as by the private sector, under the responsibility of public authorities and at the expense of public funds (Tymoschuk, 2003).

Public services are based *on public interest* which means the interest of the social community determined by the state and secured by the law, and satisfaction of this public interest serves as a condition and guarantee of the social community's existence and development. In the most general form, public interest means interest of the human community – population, people, etc. (Spasybo-Fatiiieieva, 2005).

What exactly the state authorities define as public interest depends on the level of legal culture and legal awareness of law-making subjects. And what the authorities see as the common good may actually conflict with the interests of a large part of the population. But in any case, requirements placed on the objects of public administration must ensure the general good of Ukrainian people and must not express private interest of the subjects of public administration. It is exactly in the last thesis that the essential difference between private interest and public interest lies.

Fairly complete in its content meaning of “juridical guarantees” (meaning revealing all the essential features of this concept in the general legal aspect) should be presented as follows: legal norms that determine specific legal means, conditions and procedures for realization of rights, legal means of their security and protection in case of violations.

V. F. Pohorilko understands juridical guarantees as special means provided by the law for practical protection of human and civil rights and freedoms (Pohorilko, 1997). This definition attention is not paid to the purpose of juridical guarantees, that is, to the fact what exactly they provide. Instead, definition of this concept should indicate designation of these “means and methods” as one of the most essential features of juridical guarantees. Therefore, we should pay attention to definitions which emphasize that juridical guarantees are intended to ensure actual realization, comprehensive security and protection of rights of citizens.

Let us consider definitions of the term “juridical guarantees of legality”. For example, Y. Leheza understands juridical guarantees of legality as special normative and legal means that guarantee strict implementation of legal norms, prevention of arbitrariness on the part of state bodies and officials in relation to citizens and that ensure restoration of violated rights and the punishment of violators of legality (Leheza, 2022).

Scientist Y. Leheza views juridical guarantees of legality not only as a set of means and methods (as is often the case in the above definitions), but as a unity of elements, as a complete legal entity (Leheza et., 2022).

Special guarantees include legal (juridical) guarantees of legality, which are specific legal means and internal legal mechanisms being a real embodiment of legality in the legal sphere. Juridical guarantees of legality include: completeness and effectiveness of legal norms; a high level of control and supervision over implementation of legality; high-quality activity of competent authorities aimed at ensuring legality; improvement and refinement of legal practice; effectiveness of legal liability measures (Leheza ect., 2020).

Special juridical guarantees can be divided into the following groups:

- General-legal guarantees (development of the legal system as a whole; completeness and consistency of legislation; availability of developed legal technique and legal procedure; a certain level of legal culture of the society).
- Organizational and legal guarantees (activities of the legislative, executive, judicial authorities and the President as the guarantor of the Constitution of Ukraine, as well as special-purpose bodies as the guarantors of efficiency of laws and creation of conditions for their implementation and protection).
- Procedural guarantees (availability of effective means of state coercion; presumption of innocence; equality of legal status; inalienability of rights and obligations of subjects; normatively determined principle of inevitability of punishment for violation of the Law) (Leheza ect., 2022).

2. Foreign experience ensuring the legality of the provision of public services in the field of social protection of the population

In the process of transformation in the Federal Republic of Germany in the early 1990s of state authorities into service institutions, the idea arose to create “service offices” (“burgerburo”, or “burgeramt”), which are currently operating effectively. Each of the offices independently determines the range of services that will be provided. In Germany, such a list includes services that are often in demand and the provision of which does not require long processing: from the sale of tickets and garbage bags to the registration of vehicles. Instead, most of the services in the offices consist of issuing IDs to a person. For example, the office for citizens of Weinheim provides the following services, which can be attributed to public services in the field of social protection of the population: providing children’s ID cards, ID cards for large families, ID cards for the disabled.

The German Federal Law on Social Insurance of March 23, 1994 contains a list of public services in the field of social protection of the population, which are provided in this country. In particular, paragraph 21 specifies that these include food assistance in the form of one-time payments, repair of clothing, underwear and shoes, purchase of fuel for individual heating devices, provision of special educational resources for students, repair of household appliances, care by apartment.

The Netherlands belongs to the pioneer leaders in the introduction of centers for the provision of public services in the field of social protection of the population. The peculiarity of the central office of the municipality of The Hague (Den Haag) is that citizens' social protection issues are handled separately from all other issues in offices on the second floor, taking into account the delicate and confidential nature of these cases (Leheza, 2022).

For the United States of America, the main idea of e-government is that e-government acts as a tool for the development of democracy, the expansion of public participation, as well as the strengthening of control over the state by the people. In general, the process of restructuring public administration in Western countries based on the model of electronic democracy is inextricably linked with the reorganization of state bodies and the introduction of innovative management technologies, which were supposed to improve the quality of public services in the field of social protection of the population, make them competitive compared to the services of the commercial and non-commercial sectors.

All services provided by the public sector and for which the public administration is responsible are called "public services", "services of general interest", "services of general interest". general economic interest" ("services of general economic interest"), "services for citizens" ("services for citizens"), which, in addition to other public ones, include services classified as administrative services in Ukraine (Leheza, 2022).

Services included in the social protection system, which cover the main risks that may occur during life, as well as a number of other important public services in the field of social protection of the population, which are provided directly to the person and play a preventive role, are mostly defined as "social services, that are of general interest" ("social services of general interest" (SSGI) (Social services of general interest, 2022).

It is established that the provision of public services in the field of social protection of the population in foreign countries (the Kingdom of the Netherlands, the United States of America, the Federal Republic of Germany, the Swiss Confederation, etc.) is regulated by relevant legal acts and is fixed in the administrative regulations of the activities of the subjects of executive power and local self-government, which specify the procedure for conducting cases, deadlines, the list of documents submitted by the subject of the appeal, features of the appeal, etc.

Conclusions

Therefore, based on the understanding of the guarantees of legality, we propose to highlight the following types of guarantees to ensure legality concerning provision of public services in the sphere of social protection of population in Ukraine:

1. Applications of natural persons (citizens and stateless persons) in accordance with the Law of Ukraine “On Applications of Citizens”.
2. Control over activities of public administration subjects concerning provision of public services in the sphere of social protection of population.
3. appeal of decisions, actions or inaction of public administration subjects on the provision of public services in the sphere of social protection of population in court (administrative proceedings).
4. Prosecution of public officials for refusal to provide a certain type of public service in the sphere of social protection of population.

It has been established that the importance of juridical guarantees of ensuring legality concerning provision of public services consists in the following activities: a) ensuring rights and freedoms of a person and a citizen in the process of receiving various public services; b) compliance with international standards for protection of human rights in the sphere of public services; c) raising the image of the state in the person of the subjects of appealing the specified services; d) increasing the level of legal awareness of public officials in the process of providing public services, which will be manifested in the strict observance of the legislation of Ukraine; e) improvement of the mechanism of provision of public services by subjects of public administration, etc.

Guarantees of ensuring legality concerning provision of public services include regulation through normative legal acts, availability of specific legal means, establishment of certain conditions and the procedure for realization of rights of appealing subjects, legal means of protecting rights of the subjects - consumers of public services, protection in the event of a violation in the process consideration of the application of a natural or legal entity for issuance of an administrative act (decision, permit, license, certificate, act, certificate).

Taking into account the experience of foreign countries (the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Federal Republic of Germany, the French Republic, etc.), the emphasis is on the need to develop and adopt a separate law of Ukraine “On Public Services”, which would establish all services provided bodies of executive power and local self-government.

The law must include the following elements: general provisions (definition of terms, scope of the Law, legislation in the field of providing public services, in particular in the field of social protection of the population, state policy in the field of providing public services, in particular in the field of social protection of the population, basic requirements to the regulation of the provision of public services); organization of the provision of public services, in particular in the field of social protection of the population (the procedure for the provision of public services, the register of public services, the terms of the provision of public services, the fee for the provision of public services (administrative fee), subjects of the provision of public services); responsibility for violating the requirements of legislation on the provision of public services, in particular in the field of social protection of the population, etc.

The need to intensify the activity of public administration bodies through the introduction of an electronic governance system that minimizes corruption, makes it impossible to miss the deadlines for the provision of public services and ensures a service approach in the specified area is substantiated.

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