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## **THE TRANSFORMATION OF THE PARADIGM OF LEGAL GUARANTEES AT THE TURN OF POLITICAL AND LEGAL ERAS: A THEORETICAL PERSPECTIVE**

Proponents of natural law theory (Confucius, Aristotle, Cicero, T. Hobbes, J. Locke, J.-J. Rousseau, and others, 17th–18th centuries) believed that natural law is inherent to human beings from birth; however, any law (even the laws of nature) requires guarantees [1, p. 59]. J. Lilbern (mid-17th century) was the first to establish the category of «human rights», whilst simultaneously developing a doctrine on the guarantees for their protection [2, p. 113]. As early as the 2000s, our compatriots M. Tsvik and S. Pogrebnyak rightly noted that the law itself becomes both a means of ensuring (guaranteeing) freedom and a means of restricting it [1, p. 160]. Certain legal guarantees serve as a safeguard in society, maintaining a balance between individual freedoms and the exercise of state influence, whilst minimising potential imbalances and abuses on both sides [3, p. 179]. At the same time, the role and substance of legal guarantees varied across different historical periods and depended on a range of political and legal factors.

Regarding «historical stages» and «political-legal factors»: to safeguard national interests and security, Ukraine is currently implementing a targeted policy of condemning the crimes of totalitarian communist and National Socialist (Nazi) regimes, as well as prohibiting the propaganda of Russian imperial policy. This policy is enshrined in the Laws of Ukraine «On the Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and the

Prohibition of Propaganda of Their Symbols» (No. 317-VIII, April 9, 2015) and «On the Condemnation and Prohibition of Propaganda of Russian Imperial Policy in Ukraine and the Decolonization of Toponymy» (No. 3005-IX, March 21, 2023). Although the legislation provides that such prohibitions do not extend to the use of symbols, slogans, or citations in academic and educational materials (provided they do not constitute propaganda), there is a persistent tacit practice of the absolute exclusion of such scholarly sources from contemporary Ukrainian academia.

At the same time, in the interests of accuracy, it should be noted that the development of a distinct domestic legal doctrine, particularly regarding legal guarantees in Ukrainian legal scholarship, did not, so to speak, start from a «blank slate». The theory of «legal guarantees of individual rights» was actively developing as early as the Soviet era, in the 1960s–1980s. Thus, one of the academic tasks (within the framework of a comprehensive study of the theoretical foundations of legal guarantees in Ukrainian legal scholarship) is to demonstrate how the idea of «guarantees» transformed at the turn of political and legal eras and evolved into modern scholarship. One can cite a substantial list of works by those authors whose scholarly output is based on the fundamental methodological principles established during the Soviet period. In such scholarly works, legal guarantees are regarded as a structural element of an individual's legal status, alongside rights, duties and legitimate interests. We emphasise that only genuine guarantees can ensure a high level of realisation of rights and legitimate interests, the fulfilment of legal obligations, as well as a high degree of their legal protection. At the same time, it is further stated that it is the state (ideally a «constitutional» state. – *Author's note*) that creates an effective system of measures aimed both at the direct guarantee of rights and at their protection in cases of legal violations. A number of authors, recognising the great significance of the organisational and managerial activities of public administration bodies for

the realisation and protection of citizens' rights, legitimate interests and obligations, have come to regard these activities as a distinct form of guarantee, incorporating them into the system of general and specific (legal) guarantees as an element of that system [4, p. 13; 4, p. 144-145].

It is indicative of the worldview paradigm of that time that even the purpose of positive law was viewed by these authors from the perspective of a regulatory and protective mechanism designed to ensure a guaranteed «space for lawful behavior» of participants in social relations, the functioning of which is in a deep, organic interconnection and interaction with the entire system of economic and general social regulators, incentives for the behaviour of individuals and their collectives, and with the entire system of material and spiritual interests [5, p. 246].

In Ukrainian legal scholarship of that period, the Kharkiv and Kyiv schools of procedural law were particularly influential. For instance, the authors of dissertations defended in the 1970s in Kharkiv: A. Chernihivskyi («Procedural Guarantees of the Parties Rights in the Court of First Instance in Cases Arising from Housing Legal Relations», 1973), B. Yurkov («Procedural Guarantees of Citizens Rights During the Consideration and Resolution by the Court of Complaints Against the Actions of Administrative Bodies», 1974), viewed procedural guarantees as a system of conditions, means and methods ensuring the protection of subjective rights, freedoms and interests protected by law [6, p. 19]. Certain prominent representatives of Soviet, and later Ukrainian, legal scholarship, such as M. Mykheienko, V. Shybiko, V. Nor, P. Rabinovich, V. Tertysnyk, actively researched legal guarantees in their works both before and after our state gained independence, shaping the classical conception. For example, the 2004 edition of the textbook «Human and Civil Rights» (authors: P. Rabinovich and M. Kharvoniuk) provides an academic definition of the terms «legal guarantees», «guarantees for the realisation of constitutional human and civil rights and

freedoms», – as conditions, means, principles and norms that ensure the exercise, protection and defence of these rights; it outlines a general system of types of guarantees that are interdependent and interconnected and, taken together, are capable of ensuring the realisation of constitutional rights [7, p. 246-254]. The works of these and other scholars of that period became classic sources for definitions of «legal guarantees», which continued to be actively cited even in the works of Ukrainian legal scholars during the early stages (1991–2010) of the development of independent Ukrainian legal scholarship.

Therefore, for the sake of objectivity, it is worth acknowledging that the foundation of the Ukrainian legal-scientific position at that time was the work of Soviet predecessors, who, in the initial stage, bequeathed much from the totalitarian system and its characteristic worldview regarding the relationship between «the individual, society and the state».

For example, as far back as 1986, the author of a doctoral thesis in law on the topic «Guarantees of Individual Rights in Soviet Criminal Procedure», whilst defending her thesis, emphasised that legal guarantees (using criminal procedural guarantees as an example) constitute an important aspect of the legal relationship between the state and the individual (though the state undoubtedly took centre stage in these relations. – *Author's note*). She emphasised that the issue of guaranteeing the rights and interests of the individual in Soviet procedural law had not only domestic but also foreign policy significance in the context of the international human rights obligations undertaken by the USSR. It was precisely from the perspective of the second aspect (foreign policy) that, against the backdrop of the intensifying class struggle at that time – waged by «Western imperialism» against «socialism» – the issue of human rights guarantees in the relationship between the citizen and society, in the view of the Soviet scholar, became the subject of «fierce ideological struggle» [8, p. 2-3]. Thus, as the author of the dissertation emphasised, the objectives of this study included not only

«debunking bourgeois ideological myths and stereotypes, but also affirming socialist norms of public life, genuine freedom and democracy, and promoting the Soviet historical path...» [8, p. 3-4]. As we can see, academic research shifts from a purely legal discourse into a political dispute, where even the examination of foreign («bourgeois») experience in legal safeguards takes place solely for the purpose of criticising the «foreign» and promoting the «home-grown (a priori correct)» approach. Consequently, the study of the nature and content of legal guarantees in such politicised academic works took a back seat, being reduced to declarative analyses and conclusions.

Thus, the origins of the domestic (Ukrainian) academic paradigm were laid during the period of the positivist approach, where guarantees were viewed not as an independent subject but as an appendix (accessory) to human rights. During this period, the idea of the primacy of «state provision» dominated.

Since independence, Ukrainian legal scholarship has come a long way, and views on the role and substance of legal guarantees have evolved. Today, there is a gradual shift in scholarly thinking regarding legal guarantees, from viewing them as an ancillary element to recognising them as an independent safeguard mechanism that ensures the resilience of the legal system. Contemporary challenges arising from domestic and global transformations in the social, economic, political and technological spheres are prompting a re-examination of classical approaches in the theory of guarantees and stimulating the search for solutions to new academic problems.

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