

Guarantees of the Rights and Freedoms of Man Within the New Constitution of the Republic of Tajikistan

Davlatsho Elnazarov

Faculty of Law
Department of State and Legal Disciplines
Russian-Tajik (Slavonic) University
Dushanbe, Republic of Tajikistan
sabkar@list.ru

Jamshed Jamshedov

Institute of Public Administration
of the President of the Republic of Tajikistan
Dushanbe, Republic of Tajikistan
jamshed_1873@bk.ru

Abstract—The paper considers the issues of economic, social, political, cultural and environmental guarantees of the rights and freedoms of man and citizen in the Republic of Tajikistan, their place in the system of constitutional guarantees and the national legal system, as well as in the constitutional right of the republic. It provides the analysis of the current legislation and legal practice in the republic. The importance of the considered problem is caused by the fact that the entrenchment and protection of the rights and personal freedoms stipulated in the Constitution of the Republic of Tajikistan represent its critical function thus affecting every man and citizen in Tajikistan. Without knowing his rights, freedoms and duties, neither person can feel a full member of a civil and democratic society, and hence is unable to follow the rules of this society. The studied problem presents the general review of the constitutional regulation of economic, social, political, cultural and environmental guarantees of the rights and freedoms of man and citizen in modern domestic to legal science and the prospects of their further development. The study is based on the analysis of specific provisions of the existing Constitution of the Republic of Tajikistan and the national legislation. Economic, social, political, cultural and environmental guarantees of the rights and freedoms of man and citizen are essential for human life. The constitution of the Republic of Tajikistan gives new interpretations of many rights and freedoms reflecting the reforms undertaken in the country, mainly economic ones.

Keywords—*guarantees; economic guarantees; social; constitutional rights and freedoms of a person and a citizen*

I. INTRODUCTION

One of the fundamental principles and the basis of the constitutional system of the Republic of Tajikistan is recognition, compliance and protection of constitutional rights and freedoms of man and citizen (Part 3, Article 5 of the Constitution of the Republic of Tajikistan) [1]. All public authorities and non-governmental organizations recognized by the law in the country are urged to implement this duty. They shall ensure and protect the rights and freedoms of a man within their authorities and following ways, methods and means typical for them only. The entire set of constitutional rights, freedoms and duties of man and citizen is guaranteed by the state. The recognition, compliance and protection of the rights and freedoms of man and citizen stipulated in Part 3,

Article 5 of the Constitution of the Republic of Tajikistan may be considered one of the main functions and priority task of the state. Thus, the compliance and protection of constitutional rights and freedoms of man and citizen shall be the main task of the state. The state is the only subject competent to guarantee the implementation of constitutional rights and freedoms of man and citizen.

A. Research Methods

The methodology of the studied problem covers the knowledge of factors related to a scientific problem and based on socio-political, socio-economic, sociocultural, legal and other processes and phenomena through the use of a dialectic method. Besides, this methodology makes it possible to give a legal evaluation and to define the degree of efficiency of the corresponding legal guarantees of the rights and freedoms of a man, namely economic, social, political, cultural and environmental guarantees of the rights and freedoms of man and citizen in the Republic of Tajikistan.

This methodological basis allowed investigating, considering, and performing a complex analysis, summarizing the results and systematizing the legal features of constitutional guarantees of the rights and freedoms of a man in the Republic of Tajikistan. The given paper was also based on the use of general scientific (analysis, synthesis, system, logical, etc.), specific scientific (historical and legal, legallistic) and special methods.

II. RESULTS AND DISCUSSION

A. Guarantees of constitutional rights, freedoms and duties

The word “guarantee” derives from the French word “to warrant”, “to ensure” [2] and is used in Russian in this semantic meaning [3]. It is typical to link any phenomenon or process with conditions necessary for its successful implementation and thus commission of certain positive actions in relation to it. It is fair to say that the mechanism of action of guarantees and the guarantees of the human rights as such in the Republic of Tajikistan are only at their forming stage. It is caused by the fact that in the post-Soviet legal framework and today the human rights in the legislation system were only formally registered with no relevant

mechanism of their implementation in law-enforcement practice [4]. The same situation is observed in the Russian constitutional right and in constitutional law of many post-Soviet states where the structure of this mechanism is quite imperfect. First of all, there are no normal conditions for the implementation of both human rights and the rights of citizens [5].

In juridical science the guarantees of constitutional rights, freedoms and duties are divided into two groups: 1) guarantees of constitutional rights and 2) guarantees of constitutional duties [6]. Thus, it is advisable to consider them in general because it is impossible to divide the rights and freedoms from duties, their consideration is viable in a complex since they are inseparably linked thus demonstrating their unity. The problem of guarantees of constitutional rights, freedoms and duties of a man and citizen is relevant at the present stage of development of the Republic of Tajikistan. The enforcement of rights, freedoms and duties of a man and citizen shall be considered as a democratic process governed by rules of law and providing each personality with his needs and ensuring the protection of his constitutional rights, freedoms and duties against illegal acts (or inaction) of public authorities and other persons.

The scientific approach to the problem of guarantees of constitutional rights, freedoms and duties excludes any unilaterality, "... underestimation or revaluation of various groups of guarantees. Each of the above types of guarantees is important in own way, and only together they can ensure full and comprehensive enforcement of the rights and freedoms of a man and citizen. ... Moreover, the stronger the fundamentals of the constitutional system, the stronger the role of legal and other guarantees of the rights and freedoms of a man and citizen" [7].

B. Economic guarantees

Economic (material) guarantees represent various forms of ownership stipulated in the Constitution and the system of management on their basis, which is aimed to provide worthy life to a person and a citizen, to satisfy his material, spiritual and social needs. The state implements economic guarantees, first of all, through taxes and fees, which delay in receipt leads to negative consequences: late payment of salaries, pensions, allowances, disorganization of many state programs, etc.

Thus, the International Covenant on Economic, Social and Cultural Rights implies that in order to realize the human right to labor the State Parties create conditions to guarantee the main political and economic personal freedoms (Article 6, Part III) [8]. Thus, the Covenant connects economic freedom with the right to labor. The guarantee of economic freedom is also stipulated in Articles 12, 17, 32, 35 of the Constitution of the Republic of Tajikistan. The economic guarantees include the development of market relations, industrial-production growth, free movement of goods, restriction of monopolistic economic activity, creation of conditions for healthy competition and others. Economic (material) guarantees are expressed in the rights of a man and citizen. Thus, the realization of the right to housing directly depends on housing construction, the right to labor – on available jobs allowing

choosing the kind of activity and profession, the right to medical care – on financial status of health care. The social guarantees of Part 1, Article 1 of the Constitution of the Republic of Tajikistan are also closely linked to economic guarantees.

C. Social guarantees

Social guarantees represent the corresponding environment set in the Constitution. It is some sort of material basis ensuring various material, spiritual, and other benefits to satisfy personal and, to a certain extent, public interests and needs.

Thus, the state does not interfere, but contributes. Its purpose is to perform governmental duties in relation to a person stipulated in Article 25 of the Universal Declaration of Human Rights [9] and in Article 11, Part III of the International Covenant on Economic, Social and Cultural Rights by providing everyone with the worthy standard of living.

The Articles 34, 35, 36, 37, 38, 39 of the Constitution of the Republic of Tajikistan declare the state policy on social support of a person and citizen. Thus, the Resolution of the government of the Republic of Tajikistan No. 783 of 29 December 2006 approved "The concept of social protection of the population of the Republic of Tajikistan" caused by significant changes in the country over the last few years such as "stabilization of political situation ..., reduction of administrative costs, etc." [10].

However, it cannot be claimed that everything is satisfactory in this sphere in our republic. The republic still failed to employ all citizens, there are frequent delays on salary payment to state employees and many other things. Unfortunately, these problems are still unsolved. It shall be noted with regret that the demographic processes in the Republic of Tajikistan develop negatively, and the expected life expectancy is reduced. There are various and multi-scale reasons for this situation: ranging from environmental ill-being and critical shortage of medical equipment and medicines to qualitative reduction of the reproductive ability of the population. This is one of the major problems. It shall take the priority place in the system of public interests since eventually the efficiency of its solution predetermines the future of the republic. The state shall create positive conditions for constitutional rights, freedoms and duties of a person and citizen. These positive conditions represent a complex, multistage system of certain constructive social and economic measures. There is a problem of "safe life of a person". Constitutional rights, freedoms and duties of a person and citizen act as the subject of safety. A personality acts as the subject of safety, and the main guarantor of safety is the state and the global community. Part 1, Article 16 of the Law of the Republic of Tajikistan "On Safety" says that "... according to the legislation of the Republic of Tajikistan the state ensures safety of each person and citizen, organizations irrespective of their legal form in the territory of the Republic of Tajikistan. To the citizens of the Republic of Tajikistan beyond its boundaries, the state guarantees protection and patronage where the basic principles of safety are as follows:

respect and compliance with the rights and freedoms of a man and citizen; mutual responsibility of a man and citizen, society and the state on safety and others” (Article 3) [11].

D. Political guarantees

Political guarantees play an important role in ensuring constitutional rights, freedoms and duties of a man and citizen. Political guarantees represent the system of state bodies and social and political organizations stipulated by the constitution and laws, which are created and function so that it is reasonable to involve citizens to govern the state and society. The political guarantees include “democracy, development of its institutes and forms ensuring genuine sovereignty, participation of citizens in social and state affairs, first of all by utilizing their political rights and freedoms” [12]. Thus, personal constitutional rights, freedoms and duties are implemented through the system of free elections, political diversity, multiplicity of parties, division of state authority, etc. As a rule, neither party will claim the denial of the rights and freedoms of a man and citizen and the need of their protection by state in its program documents since this will be the violation of the Constitution of the Republic of Tajikistan (Part 5, Article 8) and the legislation, and on the contrary, certain improvements will be supported and suggested. However, in some cases the fight of various non-governmental (political) organizations for power leads to active opposition of political forces within the highest levels of authority, destabilization of a social and political situation, political conflicts sometimes dissolving into armed conflicts involving heaps of people. Our state experienced this situation in 1990-1993. Such situation is characterized by mass violations of the rights of a man and citizen. Besides, Article 14 of the Law “On Non-Governmental Organizations” states: “the creation and activity of non-governmental organizations advocating racial, nationalist, social and religious strife or provoking violent overthrow of the constitutional system and organization of armed groups is forbidden” [13]. In addition to that the Law of the Republic of Tajikistan “On Fight against Extremism” describes the extremist activity (extremism) as the manifestation extreme forms of actions by legal entities and individuals calling for destabilization, change of the constitutional system in the country, seizure of power and self-empowerment, agitation of racial, national, social and religious strife ...” (Article 3) [14].

State and social problems also adversely impacted the international relation, which, in turn, demonstrates vulnerability of people, numerous violations of human rights and complete paralysis of political and legal guarantees of constitutional rights, freedoms and duties of a man and citizen. Consequently, the laws “On Refugees” and “Decision on the Creation of Interstate Fund for Refugees and Forced Migrants” is not fortuitous [15].

E. Cultural guarantees

Cultural guarantees are the state provision of society and each person with such intrinsic (spiritual) and material values, due to which they correctly understand the rights, freedoms and duties, correctly use them and correctly execute them in compliance with the Constitution. The Constitution of the

Republic of Tajikistan defines such guarantee as the recognition of ideological diversity and concurrently prohibits the creation of non-governmental organizations aimed to undermine safety of the state, create paramilitary groups, and incite social, racial, national and religious hostility (Part 1, 2, 5, Article 8 of the Constitution of the Republic of Tajikistan). The breaking of past stereotypes of the state as of the mechanism suppressing human natural identity still remains the main direction in this sphere.

The system of cultural guarantees also includes the Law of the Republic of Tajikistan “On Protection and Use of Objects of Historical and Cultural Heritage”, which “governs the relations in the sphere of protection and use of objects of historical and cultural heritage thus ensuring their full safety, comprehensive effective use and future development ...”. Here the objects are understood as (Article 3 of the above law): “the monuments associated with historical events in the life of people, development of society and state, material and non-material creative works having historical, scientific, art and other united by nationwide values” [16].

F. Environmental guarantees

The problem of human habitat protection and environmental safety is key of all problems faced by the Republic of Tajikistan, Russia and many other states and which are gaining particular importance in the new millennium and shall be solved in the 21st century. Environmental protection is ensured for a person and his wellbeing. Such situation is implied by Article 38 of the Constitution of the Republic of Tajikistan. Considering that life and human health represent the supreme value of the state, the Article 38 of the Constitution of the Republic of Tajikistan proclaimed the right of everyone for health protection and medical care and stipulates that this right is provided along with various medical and social measures, as well as measures for human health promotion, development of physical culture and sport, environmental, sanitary and epidemiological welfare. For every personality a favorable environment is not only a source of health and physical wellbeing, but also a source of satisfaction of his needs. Within the system of general guarantees this made it possible to allocate environmental guarantees in a separate group. Environmental guarantees represent the provision of such values by the state on the basis of the Constitution and the legislation (internal and international) as health, favorable environment, life safety thus allowing a personality to physically and psychologically utilizing the rights and freedoms and fulfilling his duties in full. Natural, fundamental constitutional rights of the person, such as the right to life (Part 1 of Article 18 of the Constitution of the Republic of Tajikistan), the right to health protection and the right of everyone to a favorable environment (Part 1, Article 38 of the Constitution of the Republic of Tajikistan) are violated. The right of every person to a favorable environment is a component of other natural human rights, for example, the right to a favorable life environment (Part 1, Article 12 of the Law of the Republic of Tajikistan “On environmental protection” No. 760 of 02 August 2011 says that “the citizens have the right to residence in environment favorable for health and life and to use its benefits, to

environment protection against the negative impact caused by economic and other activity, natural and technogenic disasters”) [17].

It is worth noting the Concept on Environmental Protection of the Republic of Tajikistan, which “defines the implementation of the state policy in the field of environmental protection and rational environmental management”. This concept specifies problems in environmental protection and indicates “lack of market mechanisms to implement environmental regulations and non-coordination, and in some cases the discrepancy of the environmental agency with the legislation of other ministries and departments” (Article 11, Part 1, Paragraph 1.) [18].

Besides, the Law of the Republic of Tajikistan “On Environmental Protection” says that “the state policy in the field of environmental protection represents a complex of legal, economic, organizational, educational, cultural, information, social, infrastructure and other measures of the state influence aimed at protection and rational use ... for the good of the people”.

Thus, Part 1, Article 75 of the Law of the Republic of Tajikistan “On Environmental Protection” specifies that “to increase the environmental culture of society and professional training of experts in the field of environmental protection there is a need to establish the system of general and complex environmental education including elementary, secondary, vocational and higher education, postgraduate professional education, professional retraining and professional development of experts, as well as the dissemination of environmental knowledge including through mass media, museums, libraries, cultural institutions, environmental, sports and tourism organizations”.

As already noted above, the law of the Republic of Tajikistan “On Safety” refers constitutional rights and freedoms of a person to its fundamental objects, and the officials exceeding their authority while ensuring safety bear responsibility according to the legislation (Part 3, Article 16). Such approach covers economic, political, national, military, biological, environmental safety and others.

Numerous violations of human rights may be suppressed and restored not only by state but also by public measures channelizing, sharing opinions with various state institutes, but not performing the state functions at all. Thus, at the state level there is a need to create and improve the conditions for efficient development of public organizations aimed to react “in opposition” to violation of human rights.

The peculiar feature of all types of guarantees is their close interrelation with each other. “In general the global guarantees have the influencing impact, create conditions for the legal status and lawful realization, contribute to personal development”. Thus, for example, the correlation with global social guarantees regarding the articles of the Constitution of the Republic of Tajikistan guarantees the following: family protection by the state (Part 1, Article 33), a mother and a child are under special protection and patronage of the state (Part 1, Article 34), labor protection and social protection against unemployment (Part 1, Article 35), health protection

(Part 1, Article 38), social security in old age, in cases of a disease, disability, etc. (Part 1, Article 39).

Besides, the purpose of guarantees (general and special) of constitutional rights, freedoms and duties of a man and citizen includes actual realization and development, expansion and extension of constitutional rights, freedoms and duties of a man and citizen. General and special guarantees have a certain impact on the evolution of constitutional rights, freedoms and duties of a man and citizen.

For example, the development of personal (civil) rights, freedoms and duties of a man and citizen are directly defined by legal measures. The peculiar feature of personal (civil) constitutional rights, freedoms and duties of a man and citizen is expressed in the improvement of legal measures, ways and procedures creating such conditions for a personality that allow it protecting and defending personal benefits and values forming the cornerstone of such rights and freedoms. Besides, honour and dignity are protected by the norms of other branches of law. Thus, Article 174 of the Civil Code of the Republic of Tajikistan implies that “a citizen has the right to demand by court action the denial of information disgracing his honor, dignity or business reputation unless a person that spread such information does not prove the opposite” [19]. Thus, the functional purpose of guarantees is related to the realization of constitutional rights, freedoms and duties of a man and citizen, and with their evolution.

G. Institutional guarantees

It is necessary to consider some institutional guarantees, i.e. the public authorities ensuring the protection of constitutional rights, freedoms and duties of a man and citizen. According to Part 2, Article 64 of the Constitution of the Republic of Tajikistan, the President acts as a guarantor of the Constitution, the rights and freedoms of a man and citizen. The role of the President of the Republic of Tajikistan as the guarantor of the Constitution of the Republic of Tajikistan, rights and freedoms of the person and citizen is quite significant. His main task is to take all necessary measures thus ensuring the protection of constitutional rights, freedoms and duties of a man and citizen. The Constitutional Court of the Republic of Tajikistan is new in the legal system of institute of protection of the rights and freedoms of a man and citizen. It is one of efficient means of protection of constitutional rights, freedoms and duties of a man and citizen. The Constitutional Court of the Republic of Tajikistan is governed by the constitution of the republic and the Constitutional Law of the Republic of Tajikistan “On Constitutional Court of the Republic of Tajikistan” of 26 July 2014. According to Part 3, Article 37, the Constitutional Court of the Republic of Tajikistan can also address the President of the Republic of Tajikistan regarding other issues, including the supremacy of norms of the Constitution of the Republic of Tajikistan and protection of constitutional rights and freedoms of a man and citizen in the territory of the country [20].

III. CONCLUSIONS

Thus, when creating the system of guarantees of constitutional rights, freedoms and duties of a man and citizen

the state shall rely on the following fundamental principle: every man and citizen in any region of the country, citizens of the Republic of Tajikistan and beyond its boundaries shall feel protected by the Constitution of the Republic of Tajikistan. It shall be noted that development of the constitutional and democratic state in Tajikistan implies availability and efficient functioning of legal guarantees that ensure the rights and freedoms of a man and citizen, which act as universal values resulting from the formation of the modern civil society. The main features and characteristics of legal guarantees in modern conditions is their legal confirmation consisting of efficient protection, protection of the rights and freedoms of a man and citizen mainly provided by legal guarantees.

Legal guarantees perform their functions in unity and indissoluble connection with other guaranteeing conditions, which in juridical science are defined as “general”, i.e. economic, sociopolitical, cultural, environmental and others.

Acknowledgements

The authors express their gratitude to the Russian-Tajik Slavonic University for financing the research under the University Development Program for 2018.

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