

Правовые проблемы установления субъектами Российской Федерации дополнительных гарантий реализации конституционных прав и свобод человека и гражданина**А.В. Чуклин***Южно-Уральский государственный университет (национальный исследовательский университет), г. Челябинск, Россия*

В статье акцентируется внимание на необходимости совершенствования законодательной и правоприменительной деятельности, связанной с закреплением субъектами Российской Федерации дополнительных гарантий реализации конституционных прав и свобод человека и гражданина. Определяются направления совершенствования правового регулирования в области установления субъектами Российской Федерации дополнительных гарантий реализации конституционных прав и свобод человека и гражданина. Сделан вывод о том, что совершенствование региональной правовой политики в области закрепления субъектами Российской Федерации дополнительных гарантий реализации конституционных прав и свобод человека и гражданина имеет огромную практическую значимость и способствует теоретическому познанию указанной правовой категории.

Ключевые слова: права и свободы человека и гражданина; гарантии, реализация, субъекты Российской Федерации, конституционное право, правотворчество, совершенствование.

The legal problems of establishing the additional guarantees of realization of constitutional human and civil rights and freedoms by the subjects of the Russian Federation**A. V. Chuklin***South Ural State University (National Research University), Chelyabinsk, Russia*

The subject. The article focuses on the need to improve legislative and law enforcement activities related to the consolidation of subjects of the Russian Federation additional guarantees of realization of constitutional human and civil rights and freedoms.

The purpose of the article is to identify main ways of improvement the legal regulation additional guarantees of realization of constitutional human and civil rights and freedoms by the subjects of the Russian Federation.

The methodology. The author uses a dialectical method, a method of analysis and synthesis, a formal legal method,

The results and scope of application. The lack of unity in understanding the essence of additional guarantees of realization of rights and freedoms requires not only theoretical analysis of this legal category, but a consistent system of the legislation, and corresponding to the system of law enforcement practice. The legal establishment of the additional guarantees of realization of constitutional human and civil rights and freedoms, due solely to the will of the legislator of a subject of the Russian Federation aimed at the concretization of constitutional rights and freedoms as well as of the security mechanisms (legal conditions, means) of the implementation of these rights. Features of development of the corresponding subject of the Russian Federation should be taken into account.

One of the main directions of improvement of legal regulation in this field is legislative recognition of additional guarantees of realization of constitutional human and civil rights and freedoms established by the constituent entities of the Russian Federation. This concept should be reflected in the Federal law of 6 October 1999 No. 184-FZ "On General principles of organization of legislative (representative) and executive bodies of state power of subjects of the Russian

Federation", as well as in the constitutions (charters) of subjects of the Russian Federation. The consolidation of this concept in the legislation will be the impetus to the theoretical analysis of this legal category, and will ultimately contribute to the improvement of the legal status of the individual.

Conclusions. Improvement of regional legal policy in the sphere of establishment additional guarantees of realization of constitutional human and civil rights and freedoms by subjects of the Russian Federation has great practical significance and contributes to the theoretical knowledge of the specified legal category.

Keywords: human and civil rights and freedoms, guarantees, implementation, constituent entities of the Russian Federation, constitutional law, law-making improvement.

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1. Introduction

The issues of improving the legal regulation of both regional and federal legal policies in the field of establishing by the constituent entities of the Russian Federation additional guarantees for the exercise of constitutional rights and freedoms of a person and citizen acquire particular urgency. The need for such improvement will allow us to build a consistent system of concepts "basic guarantees for the realization of constitutional rights and freedoms of man and citizen," "additional guarantees for the exercise of constitutional rights and freedoms of a person and citizen established by the subjects of the Russian Federation."

Currently, the problems of the application by the legislative and judicial authorities of the norms concerning additional guarantees for the exercise of constitutional rights and freedoms of a person and a citizen are reduced to the absence of a uniform approach in their understanding. To a large extent this is facilitated by the existence of a multitude of opinions on the concepts of "guarantees of rights and freedoms" [1; 2, p. 13], "legal guarantees of human and citizen's rights and freedoms" [3, 4], "ensuring rights and freedoms" [5, 6], "the realization of rights and freedoms" [7, 8, 9], "protection of rights and freedoms" [10, p. 42], "protection of rights and freedoms" [11, 12].

In the practical activities of the subjects of the Russian Federation, this plurality of theoretical positions leads to specific problems of law enforcement. For example, to establish an additional guarantee of constitutional rights and freedoms is the right or obligation of the subject of the Russian Federation; in mandatory order, an additional guarantee for the exercise of constitutional law and freedom should be provided by the financial resources of the subject of the Russian Federation? In addition, in terms of the authorized powers of the subject of the Russian Federation to establish additional guarantees for the exercise of constitutional rights and freedoms of man and citizen, there are also different points of view. For example, if we are talking about additional guarantees for the realization of rights and freedoms, as protection of human and civil rights and freedoms, then competence should be sought only within the framework of Art. 71, 72 of the Constitution of the Russian Federation. In this regard, within the exclusive jurisdiction of the constituent entities of the Russian Federation, additional guarantees for the exercise of constitutional rights and freedoms can not be established. At the same time, it is not taken into account that any activity of legislative and executive bodies is determined by rights and freedoms and is aimed at guaranteeing them, including within the exclusive jurisdiction of the subjects of the Russian Federation.

Pod additional guarantees of the constitutional rights and freedoms of man and citizen, established by the Russian Federation, it is necessary to understand legal regulations determined

solely by the will of the legislator of a constituent entity of the Russian Federation aimed at specifying the constitutional rights and freedoms of a person and citizen and the security mechanisms (legal conditions, means) for the realization of these rights, taking into account the specific development of the relevant constituent entity of the Russian Federation.

2. Directions for improving legal regulation

The regional legal policy in the conditions of Russian federalism [13, 14] should reflect the legal equality and certain economic and political independence of the subjects of the Russian Federation. These circumstances are important in the analysis of competing constitutional ideas and values [15], in particular, when establishing additional guarantees of rights and freedoms must be based on authorities of the Russian Federation, and not from the charges. At the same time, legislative and judicial practice has examples of understanding additional guarantees as obligations of subjects of the Russian Federation, expressed from the position of the constitutional idea of social state.

We consider it possible to identify the following areas for improving the regional legal policy of the Russian state in establishing additional guarantees for the exercise of constitutional rights and freedoms.

1. Consideration of issues of improving legal regulation in the field of establishing by the subjects of the Russian Federation additional guarantees for the exercise of constitutional rights and freedoms of a person and a citizen must begin with an analysis of their competence. In this regard, one of the ways to improve the legal regulation in this area of relations is the legislative recognition of additional guarantees for the exercise of constitutional rights and freedoms of a person and citizen established by the subjects of the Russian Federation.

This concept should be reflected in Federal Law No. 184-FZ of October 6, 1999 "On General Principles for the Organization of Legislative (Representative) and Executive Bodies of State Power in the Subjects of the Russian Federation". The Federal Law should clearly distinguish the powers of the subject of the Russian Federation, depending on the type of additional guarantees for the exercise of constitutional human rights and freedoms and citizen.

In addition, the effective delimitation of powers is the starting point in the strategic improvement of regional legal policy [16, 17, 18].

At present, the transfer of the powers of the Russian Federation to the constituent entities of the Russian Federation, as well as local self-government bodies, is carried out with a nominal participation of the latter. Subjects of the Russian Federation and municipal entities are deprived of the right to refuse to exercise such powers, there is no mechanism for agreeing the amount of subventions that are transferred for their implementation. In a number of cases, the transfer of the powers of the Russian Federation to the bodies of state power of the subjects of the Russian Federation and local self-government bodies was carried out in violation of the requirements established by Federal Law No. 184-FZ.

It is advisable to introduce a chapter on additional guarantees for the exercise of constitutional rights and freedoms in the constitutions (charters) of the constituent entities of the Russian Federation. It is necessary to accumulate additional guarantees of the exercise of constitutional rights and freedoms in relation to specific conditions of the life of the population of the region. Certainly, such additional guarantees for the exercise of constitutional rights and freedoms on the legal and technical side will have a direct connection with the constitutional rights and freedoms themselves and will be presented in an abstract form that is characteristic of the constitutions (charters) of the subjects of the Russian Federation. At the same time, their presence will allow further in the framework of the legislation of the constituent entities of the Russian Federation to provide appropriate concretization of these additional guarantees for the exercise of constitutional rights and freedoms.

At the same time, it is important that the concretization of additional guarantees for the exercise of constitutional rights and freedoms established by the constitutions (charters) of the constituent entities of the Russian Federation was carried out primarily by the laws of the subject of

the Russian Federation, and not by by-laws. To a large extent, this will make it possible to establish stable operating additional guarantees for the realization of constitutional rights and freedoms that are relevant to the social relations existing in the region.

Meanwhile, in the law-making practice of federal bodies of state power, there are measures to establish the obligation to adopt certain laws of the subjects of the Russian Federation. This provision can be considered the main guarantee, and the implementation of this guarantee at the level of the constituent entities of the Russian Federation is an additional guarantee. In particular, according to Art. 12 of the Federal Law of June 25, 2002 No. 73-FZ "On Objects of Cultural Heritage (Monuments of History and Culture) of the Peoples of the Russian Federation" [2]. The procedure for the formation, financing and implementation of regional programs for the protection of cultural heritage sites of regional significance and objects of cultural heritage of local (municipal) significance is established by the law of the relevant subject of the Russian Federation. Taking into account that Federal Law No. 73-FZ of 25 June 2002 on the objects of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation regulates relations in the field of preservation, use, popularization and state protection of cultural heritage sites (historical and cultural monuments) peoples of the Russian Federation and is aimed at implementing the constitutional right of everyone to access cultural values and the constitutional duty of everyone to care for the preservation of historical and cultural heritage, to cherish monuments of history and culture, as well as the realization of the rights of peoples and other ethnic communities in the Russian Federation to preserve and develop their cultural and national identity, to protect, restore and preserve the historical and cultural environment, to protect and preserve sources of information on the birth and development of culture, the norm set out in Art. 12 of this Federal Law, can be considered the main guarantee for the implementation of the relevant constitutional law.

At the same time, some laws of the subjects of the Russian Federation [3] do not establish the procedure for the formation, financing and implementation of regional programs of the Omsk Region for the protection of cultural heritage sites of regional significance and objects of cultural heritage of local (municipal) value, but provide for a blanket rule that allows the establishment of this procedure by by-laws.

2. In order to adequately establish additional guarantees for the exercise of constitutional rights and freedoms of a person and a citizen, it is required that the federal authorities establish the basic guarantees for the exercise of constitutional rights and freedoms. At the same time, there are not always basic guarantees (federal laws are not always adopted), without which it is impossible for the subjects of the Russian Federation to establish additional guarantees for the exercise of constitutional rights and freedoms. This problem cannot be ignored, since its importance is obvious.

For example, administrative reform had been for a long time controlled by the federal center in the absence of the necessary federal laws on public service standards and administrative regulations, the adoption of which was expected back in 2006 (the concept of administrative reform in the Russian Federation in 2006-2010, approved by the decree of the Government of the Russian Federation of 25 October 2005 No. 1789-r [4]). This circumstance reflects the contradiction of the very ideology of administrative reform, which is based on the idea of strict regulation of administrative processes, including in the subjects of the Russian Federation, and the main legal acts on which such rationing should be based, were not adopted. Only in 2010 was adopted the Federal Law of July 27, 2010, No. 210-FZ "On the organization of the provision of state and municipal services" [5], which reflected the regulation of relations associated with the adoption of administrative regulations.

In this connection, there are examples in the law-making practice when the subject of the Russian Federation is ready to establish additional guarantees for the exercise of constitutional rights and freedoms, but the federal legislator is in no hurry to establish a basic guarantee, without which the subject of the Russian Federation does not have the authority to establish an additional guarantee.

3. It is necessary to transform traditional approaches to the financial and economic encumbrance of the subjects of the Russian Federation to provide a number of additional guarantees

for the exercise of constitutional rights and freedoms by virtue of federal legislation and law enforcement practice.

At present, it is traditional to consider, firstly, the vertical distribution of financial resources on the basis of the program-targeted method of financing. Second, the obligation of the Russian Federation to finance a number of additional guarantees for the implementation of constitutional rights and freedoms by virtue of federal law and practice.

In this regard, on the one hand, the federal legislator through the multiplicity of federal programs contribute to the establishment of the subjects of the Russian Federation of additional guarantees of constitutional rights and freedoms.

On the other hand, the Federal Law of August 22, 2004 № 122-FZ "On Amendments to Legislative Acts of the Russian Federation and Invalidating Certain Russian Federation Legislative Acts in Connection with Adoption of the Federal Law" On Introducing Amendments and Additions to the Federal Law "On general principles of organization of legislative (representative) and executive bodies of state power of the Russian Federation "and" On general principles of local self-government in the Russian Federation" [7] contradict the Federal Law of October 6, 1999 № 184-FZ "On general principles of organization of legislative (representative) and executive bodies of state power of subjects of the Russian Federation" in fact ordered the subjects of the Russian Federation to provide some additional measures of social support, including employees health care institutions located in rural areas.

It does not take into account that in 2012 in connection with the adoption of the Federal Law of November 21, 2011 № 323-FZ "On the basis of public health protection in the Russian Federation" [8] has changed in the field of health care management system, in terms of the redistribution of powers between the local authorities and public authorities of the Russian Federation. According to such a redistribution of competence entire health care system has become regional. However, the obligation to provide additional guarantees provided by the Federal Law on t August 22, 2004 № 122-FZ, also moved from the municipal level to the level of the Russian Federation without adequate financial support.

In order to eliminate the contradictions between the federal law is necessary to amend the Federal Law of August 22, 2004 № 122-FZ and delete provisions, contributing to the understanding of the process of securing additional guarantees of the constitutional rights and freedoms , as the responsibilities of public authorities of the Russian Federation.

4. It is necessary to stabilize the dynamics of changes in the federal legislation of the action of the basic guarantees of the constitutional rights and freedoms. Sometimes until the next change of this or that law norms in the regions do not have time to get used to the idea of the presence in its competence certain powers not even have time to formulate a strategy for the development of financial and budgetary, on the basis of the opportunities offered by the Russian Federation, subjects of the federal law. So, in the last two years (2015, 2016) Federal Law of October 6, 1999 № 184-FZ "On general principles of organization of legislative (representative) and executive bodies of state power of subjects of the Russian Federation" has undergone 20 changes the Budget Code of Russian Federation [9] for the same period of time has changed 12 times, the second part of the Tax Code [10] was adjusted 23 times only in 2006. In connection with this strategy of regional legal policy for the establishment of additional guarantees of the constitutional rights and freedoms of man and citizen depends on the dynamics of changes in the federal legislation.

5. We need to improve the possibility of citizens' law-making initiative to establish additional guarantees of the constitutional rights and freedoms. Lawmaking initiative of citizens is a tool of citizens' influence on the lawmaking process in the subject of the Russian Federation, including with regard to establishing additional guarantees of the constitutional rights and freedoms of man and citizen.

In this regard it should be noted that the practice of the Russian Federation does not have unity on the issue of securing the lawmaking initiative of citizens. Constitutions (charters) of subjects of the Russian Federation shall establish provisions, aimed at regulating the relations

connected with the provision of the right of legislative initiative of the various public authorities and individual officials.

According to Art. 6 of the Federal Law of October 6, 1999 № 184-FZ "On general principles of organization of legislative (representative) and executive bodies of state power of subjects of the Russian Federation," the right of legislative initiative in the legislative (representative) body of state authority of the Russian Federation belongs to the deputies, senior official entity of the Russian Federation (the head of the highest executive body of state authority of the Russian Federation), representative bodies of IU local self government. Constitution (charter) subject of the Russian Federation the right of legislative initiative may be granted to other bodies, members of the Federation Council of the Federal Assembly - the representatives of the legislative (representative) and executive bodies of state power of subjects of the Russian Federation, public associations and citizens living on the territory of the subject of the Russian Federation.

However, there are constitutions (charters) of the Russian Federation, in which the legislative initiative right is not granted to citizens of the Russian Federation.

In addition, some subjects of the Russian Federation grant the citizens of the Russian Federation only the right of legislative initiative, and the other part of the Russian Federation to fit much broader issue of granting Russian citizens lawmaking initiative. In particular, it establishes the right of people's law-making initiative, which also applies to the level of subordinate legislation.

Providing citizens of the Russian Federation to introduce the initiative in relation to changes in-laws and regulations is an additional guarantee of the constitutional right to participate in managing state affairs, established by the Russian Federation, the subject [20].

However, it should be noted that the consolidation of the law-making initiative for the citizens, requires a high level of legal awareness of citizens. This consolidation should be implemented taking into account the conduct of parallel operation associated with an increase appropriate level of legal culture. Only in this case, Institute of lawmaking initiative of citizens in the broadest sense will be perceived as an additional guarantee of the constitutional rights and freedoms of man and citizen and cannot be used as a means of exerting pressure on state power in the subjects of the Russian Federation.

3. Conclusions.

The improvement of the federal and regional legal policy in the field of securing the subjects of the Russian Federation of additional guarantees of the constitutional rights and freedoms of is of great practical significance, and ultimately contributes to the theoretical knowledge of this legal category.

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