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Sara Aliyeva

The Academy of Public Administration under the
President of the Republic of Azerbaijan
master student
saraaliyeva2@gmail.com

Maryam Mammadova

The Academy of Public Administration under the
President of the Republic of Azerbaijan
master student
maryam.mamedova2001@gmail.com

Yagub Abdulla

The Academy of Public Administration under the
President of the Republic of Azerbaijan
master student
abdullayev-yagub@mail.ru

CONSTITUTIONAL GUARANTEES OF RIGHTS AND FREEDOM OF HUMAN AND CITIZEN

Abstract

This article examines the relevance and importance of constitutional guarantees of the rights and freedom of individuals in contemporary society. The research aims to classify types of constitutional rights, define types of constitutional guarantees of rights and freedom, as well as analyze the mechanisms for protecting such guarantees and their actual impact in modern legal societies. To achieve these goals, the authors analyze the activities of state authorities in protecting constitutional guarantees. The role of constitutional norms and principles in safeguarding fundamental individual rights, preventing abuses of power, and uniting society around common values is emphasized. The authors provide a conceptual framework for constitutional guarantees of rights and freedom, distinguish them, determine their primacy and necessity among other types of guarantees, and analyze the mechanisms for guarantee protection. The theoretical propositions presented in the research can be utilized in further studies of the institute of constitutional guarantees of rights and freedom.

Keywords: *guarantees, rights and freedom of human and citizen, Constitution, government bodies, mechanisms, protection and provision, legislation, law and order*

Sara Əliyeva

Azərbaycan Respublikasının Prezidenti yanında
Dövlət İdarəçilik Akademiyası
magistrant
saraaliyeva2@gmail.com

Məryəm Məmmədova

Azərbaycan Respublikasının Prezidenti yanında
Dövlət İdarəçilik Akademiyası
magistrant
maryam.mamedova2001@gmail.com

Yaqub Abdulla

Azərbaycan Respublikasının Prezidenti yanında
Dövlət İdarəçilik Akademiyası
magistrant
abdullayev-yagub@mail.ru

İnsan və vətəndaş hüquq və azadlıqlarının konstitusiyə təminatları

Xülasə

Bu məqalədə müasir cəmiyyətdə insan və vətəndaş hüquq və azadlıqlarının konstitusiyə təminatlarının aktuallığı və əhəmiyyəti müzakirə olunur. Tədqiqatın məqsədləri konstitusiyə hüquqlarının növlərini təsnif etmək, hüquq və azadlıqların konstitusiyə təminatlarının növlərini, habelə bu cür təminatlarının qorunması mexanizmlərini və müasir hüquqi cəmiyyətdə real təsirlərini müəyyənləşdirməkdir. Tədqiqatın məqsədlərinə çatmaq üçün müəlliflər tərəfindən konstitusiyə təminatlarının qorunması sahəsində dövlət orqanlarının fəaliyyətini təhlil etmək vəzifəsi qoyulmuşdur. Konstitusiyə norma və prinsiplərinin fərdin fundamental hüquqlarının müdafiəsinin təmin edilməsində, hakimiyyətdən sui-istifadə hallarının qarşısının alınmasında və cəmiyyətin ümumi dəyərlər ətrafında birləşməsində rolu vurğulanır. Müəlliflər hüquq və azadlıqların konstitusiyə təminatlarının anlayışını verməyə, onları fərqləndirməyə, habelə digər təminat növləri arasında üstünlük və zəruriliyi müəyyənləşdirməyə, təminatların qorunması mexanizmlərini təhlil etməyə çalışdılar. Tədqiqat zamanı irəli sürülən nəzəri müddəalardan hüquq və azadlıqların konstitusiyə təminatları İnstitutunun sonrakı tədqiqatlarında istifadə edilə bilər.

Açar sözlər: təminatlar, insan və vətəndaşın haqları və azadlıqları, Konstitusiyə, hökumət orqanları, mexanizmlər, qoruma və təminat, qanunvericilik, qanun və qayda

Introduction

The relevance and importance of constitutional guarantees of the rights and freedom of individuals remain unchanged in modern society and are crucial for ensuring justice, legality, and the protection of fundamental individual rights, equality, and stability in the contemporary world. Constitutional guarantees serve as a mechanism to limit power, preventing its abuse. They establish boundaries for the actions of government bodies and protect citizens from arbitrariness and unlawful interference. The novelty and relevance of constitutional guarantees of rights and freedom of a man and citizen are evident in their ability to effectively respond to changing social and legal contexts, creating a sustainable and just legal foundation for modern society. The relevance of constitutional guarantees also stems from their alignment with international human rights norms. In the modern world, it is important for national constitutions to adhere to universally recognized standards, providing a unified level of protection for citizens' rights.

Constitutional guarantees serve as the foundation for protecting the fundamental rights and freedom of every individual and citizen. These guarantees create a structural framework ensuring that citizens can rely on the law and justice in the event of a violation of their rights. The implementation of human rights and freedom in the Russian Federation depends on the quality of the regulatory framework for public relations, the effectiveness of the activities of the organs ensuring the observance and protection of the rights and freedoms of citizens, as well as the presence of civil society in society itself (Romanovskaya, 2020: 52).

The Declaration of Independence, adopted during the period of the first democratic and secular state in the Muslim East - the Azerbaijan Democratic Republic, having the status of a constitutional act, for the first time enshrined a set of rights and freedom inherent to democratic states.

During the Azerbaijan SSR, Constitutions were adopted in 1921, 1927, 1937, and 1978, each outlining certain rights and freedom of individuals. The 1921 Constitution introduced the concept of Azerbaijani citizenship for the first time. The 1937 Constitution formally granted broad democratic rights and freedom to the citizens of Azerbaijan. Universal and direct voting rights were proclaimed. The Constitution of the independent Republic of Azerbaijan was adopted through a nationwide referendum on November 12, 1995. On August 24, 2002, March 18, 2009, and September 26, 2016, the first amendments to the Constitution of Azerbaijan were made through nationwide voting (referendum). The Constitution enshrines the fundamental rights and freedom for every individual and citizen.

The concept of constitutional rights: Constitutional, also known as fundamental, rights and freedom of an individual and citizen are inalienable rights and freedoms belonging to them from birth (in some cases - by virtue of citizenship), protected by the state, forming the basis of the legal status of an individual (Zharkov, 2006: 99). The constitutional and legal status of an individual represents their legally established position in society and the state, as defined by the norms of the national constitution and international humanitarian law. This status enables individuals to fully enjoy their natural, inalienable rights inherent to every person from birth.

The constitutional and legal status of a citizen encompasses political rights, freedom, and responsibilities. These are granted by the state with the aim of ensuring active participation in public governance and realizing the potential to engage without any restrictions in relationships with the state (Kazannik, 2015: 268). According to paragraph 2 of Article 24 of the Constitution of the Republic of Azerbaijan, everyone possesses inviolable, unassailable, and inalienable rights and freedoms from birth (4).

Constitutional rights and freedom of an individual and citizen provide a constitutionally guaranteed opportunity for an individual and citizen to enjoy various social benefits to satisfy their needs.

Constitutional rights and freedom have certain features that determine the legal nature of constitutional rights and freedom, distinguishing them among other types of rights and freedoms. These features include:

Supremacy: Constitutional rights and freedom have the highest force throughout the territory of the entire state. According to paragraph 6 of Article 71 of the Constitution of the Republic of Azerbaijan, on the territory of the Republic of Azerbaijan, the rights and freedoms of an individual and citizen are directly applicable.

No provision of the Constitution can be interpreted as aimed at abolishing the rights and freedoms of individuals and citizens. No legal act or decision contradicting constitutional rights and freedoms, as well as the overall provisions of the Constitution, has legal force. In case of a collision, the constitutional norm always prevails.

Only constitutional rights and freedom apply throughout the territory of the state concerning all citizens, foreigners, and stateless persons.

Constitutional rights, freedom, and duties enjoy enhanced legal protection. This is because all Constitution norms are under special state protection.

Constitutional rights and freedom serve as the legal basis for all other rights, freedoms, and duties established by legislation.

Constitutional rights and freedom of individuals and citizens have a continuously effective, uninterrupted nature. They can be limited by law to the extent necessary for the protection of the foundations of the constitutional order, the rights and legitimate interests of others, and the defense and security of the state.

Classification of constitutional rights. Rights and freedom are conditionally divided into three groups – personal, political, economic, social, and cultural. Chapter 3 of the Constitution of the Republic of Azerbaijan establishes the fundamental rights and freedoms of individuals and citizens. Some of these rights include (Shevchenko, 2009: 74):

Personal constitutional rights and freedoms:

Right to life;

Right to equality;

Right to freedom, personal inviolability, and the inviolability of private life;

Right to personal and family secrets;

Right to protect honor and dignity;

Right to national identity;

Right to use the native language;

Right to freedom of conscience;

Right to freedom of thought and speech;

Right to information;
Political constitutional rights and freedom:
Right to citizenship;
Right to association;
Citizens' right to participate in state governance;
Electoral right;
Right to petition.
Economic, social, and cultural rights and freedoms outlined in the Constitution:
Right to private property;
Right to work;
Right to rest;
Right to health protection;
Right to education;
Right to culture and creativity.

Thus, constitutional guarantees constitute a system of means, ways, and methods to ensure and protect the fundamental rights and freedom of individuals and citizens established in the norms of the Constitution. Constitutional guarantees of rights and freedoms encompass groups such as political, socio-economic, organizational, institutional, spiritual, and legal guarantees (Əsgərov, 2011: 106).

Political guarantees of rights and freedom of individuals and citizen represent the objective political conditions in the state and society, creating factual opportunities for the realization and effective protection of these rights and freedom. Including the diversity of political institutions, the development of civil society, democratic institutions, and forms of power, as well as their activity and legal regulation, these guarantees should be distinguished from formally declared ones at the constitutional level. Being an integral part of the constitutional order, these guarantees can be considered constitutional if they are not only enshrined in the text of the constitution but are also effectively aimed at ensuring the rights and freedom of individuals, maintaining a democratic legal regime, political stability, and civil concord, in line with modern scientific concepts regarding their nature and content.

Social-economic constitutional guarantees of rights and freedom of individuals and citizen constitute the fundamental and programmatic provisions of the development of the constitutional system, enshrined in the Constitution, as well as the existing favorable socio-economic conditions in the state and society that contribute to the realization of these rights and freedoms. These guarantees include stability and progressive economic development, state support and protection of all forms of property, profitable spheres of production and entrepreneurial activity, as well as the implementation of a balanced state policy in the development of the financial and credit system. The main focus should remain on a socially-oriented state policy based on the principles of equality before the law, respect for the rights and legitimate interests of social partnership, as well as the interaction of all members of civil society. These guarantees encompass areas such as healthcare, education, housing and communal services, providing benefits to various categories of socially vulnerable population, pension provision, stabilization of the demographic situation, tolerant national state policy, and ensuring a decent standard of living for every individual and citizen.

Organizational and institutional guarantees of rights and freedom of individuals and citizen are aimed at creating optimal conditions for ensuring these rights and freedom, as well as mechanisms for their protection and restoration. This includes the formation of a system of state bodies, institutions, and public organizations engaged in activities related to human rights. These include judicial bodies, the prosecutor's office, human rights ombudsmen, trade unions, human rights NGOs, and others. Measures taken by the state to ensure the comprehensive realization of rights and freedom include state programs for socio-economic development, support for specific categories of citizens, and the provision of certain groups of rights. This also involves the adoption

of special legislative acts in the field of public relations and the formation of specific mechanisms for their implementation.

Legal guarantees of rights and freedom of individuals and citizen constitute a set of interconnected legal means established by the Constitution, ensuring the protection of these rights and freedom. They include normative, procedural, institutional, and organizational aspects. Normative guarantees are based on a system of laws and provisions defining the legal status of individuals in this area. Procedural guarantees are related to the legal order and procedures, including judicial and other processes. Legal guarantees are further divided into two groups: formal-legal and institutional guarantees.

Formal-legal guarantees involve normative enactment (directly in the Constitution of the Republic of Azerbaijan and other laws) and other provisions aimed at ensuring rights and freedoms.

However, despite the significance of formal-legal guarantees, the leading role in the protection of rights and freedoms belongs to institutional guarantees. If a person in a particular state lacks the real opportunity to defend and restore their rights, formal-legal guarantees lose their value.

Institutional guarantees encompass various state bodies to which individuals turn for the protection of their rights, as well as procedural guarantees ensuring the protection of rights and freedoms (judicial procedures, procedures for amnesty and pardon, etc.).

Two methods of implementing rights and freedom are distinguished:

Natural method: Implementation of rights and freedoms without the need for permission or notification to any authorities. This includes freedom of thought and speech, freedom of conscience, property rights, participation in cultural life and creativity, etc.

Notification Method: This method is associated with the necessity to obtain permission from competent state authorities to exercise certain rights and freedoms (e.g., the right to strike, for specific types of entrepreneurial activities, freedom of assembly, visiting specific areas and objects, etc.).

Spiritual guarantees of rights and freedoms of individuals and citizen, established as the foundations and programmatic provisions of the development of the constitutional system in the norms or separate provisions of the Constitution, as well as existing factually favorable political, socio-economic, and other conditions in the state and society, contribute to creating factual opportunities for the realization of spiritual rights and freedoms. These include cultural, moral, aesthetic, religious, intellectual, and other legitimate interests in this area, as well as their effective protection (Fokina, 2011: 233).

The executive, legislative, and judicial authorities are tasked with ensuring and protecting the rights and freedoms of individuals. The Constitution of the Republic of Azerbaijan defines specific mechanisms for ensuring and protecting constitutional rights and freedoms, which include:

1. The President of the Republic of Azerbaijan.
2. Prosecution authorities, responsible for promptly responding to any violations of laws in the Republic of Azerbaijan.
3. The Commissioner for Human Rights, whose status is enshrined in the Constitutional Law of the Republic of Azerbaijan dated December 28, 2001, "On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan".
4. Various executive authorities (internal affairs, justice, health, education, transport, etc.), tasked with resolving issues raised by citizens.
5. All other state and non-governmental organizations.

According to Article 8 of the Constitution, the President of the Republic of Azerbaijan is the Head of the Azerbaijani state. The President plays a crucial role in this mechanism, serving as the head of the state and a guarantor of constitutional rights and freedom of individuals. The President can and should use all authority and opportunities in this regard. The staff of the presidential structure, the Presidential Administration, consistently handles written appeals from citizens to the President, organizing receptions to assist them in realizing their rights.

In accordance with the Law of the Republic of Azerbaijan "On the Prosecutor's Office", one of the fundamental principles of the prosecutor's office is the observance and respect for the rights and freedom of individuals, as well as the rights of legal entities (8). To implement this principle, the prosecutor's office is vested with powers to release unlawfully detained individuals, take legal action against those responsible for law violations, etc.

According to Article 45 of this Law, in the manner and cases established by law, based on a court decision, the prosecutor's office is allowed to take procedural actions that restrict the rights and freedom of individuals as provided by the Constitution of the Republic of Azerbaijan (8).

The Constitution also provides for the establishment of a special official position – the Commissioner for Human Rights (ombudsman), whose duty is to protect the rights and freedom of individuals.

Article 1 of the Constitutional Law of the Republic of Azerbaijan "On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan" establishes the position of the Commissioner for Human Rights of the Republic of Azerbaijan in the Constitution of the Republic of Azerbaijan. This position is supported by international treaties endorsed by the Republic of Azerbaijan and is established to restore the rights and freedom of individuals violated by state authorities, local self-government bodies, and officials of the Republic of Azerbaijan (9).

According to paragraph 6 of Article 95 of the Constitution of the Republic of Azerbaijan, the Commissioner for Human Rights is elected by the Milli Majlis (Parliament) of the Republic of Azerbaijan based on the nomination of the President of the Republic of Azerbaijan.

In accordance with Article 130 of the Constitution of the Republic of Azerbaijan, the Commissioner for Human Rights of the Republic of Azerbaijan is entitled, concerning legislative and executive acts, municipal acts, and court decisions violating human rights and freedom, to appeal to the Constitutional Court of the Republic of Azerbaijan in the manner prescribed by law (4).

However, in all the mentioned cases, it concerns guarantees and mechanisms for protecting rights and freedom related to the activities of executive authorities. National and international practices show that these structures cannot ensure the same degree of effectiveness in protecting constitutional rights and freedom as judicial protection can. Disputes related to the violation of human and citizen rights and freedom are resolved by courts. The President of the Republic, the staff of the Presidential Administration, the prosecutor, and the Commissioner for Human Rights are officials who consider and resolve citizens' appeals individually, without following any special procedure, and their decisions resulting from the consideration of appeals are not binding. Therefore, the judicial mechanism for protecting rights and freedom is considered the most effective, as it allows citizens to seek the restoration of their violated rights, present evidence, make motions, and appeal court decisions (Shalumov, 2006: 134).

The legal basis for the judicial protection of citizens' rights and freedom is Article 60 of the Constitution of the Republic of Azerbaijan, which guarantees everyone the protection of their rights and freedoms through administrative proceedings and the court. In the mechanism of judicial protection of citizens' rights and freedom, all levels of the judicial system are involved, including the Constitutional Court. Each level of the judicial system plays an individually significant role in this protective mechanism (1).

Thus, guarantees of fundamental rights and freedom are the conditions and means that ensure their implementation. They include general state guarantees of human and citizen rights and freedom, as well as specific legal guarantees for their protection. In accordance with paragraph 4 of Article 68 of the Constitution of the Republic of Azerbaijan, the state, together with public servants, bears civil liability for damage caused to the rights and freedoms of individuals as a result of the unlawful actions and inaction of public servants and the violation of their guarantees (1).

The rights and freedom of a person and a citizen, their recognition, protection, and guarantees are affirmed as the fundamental and defining criterion of the legal nature of legislation and the practice of its application.

The principle of the priority of the rights and freedom of a person and a citizen, enshrined in the Constitution, is addressed to all branches of state power, binding and obliging them (Belik, 2017: 23). Article 71 of the Constitution of the Republic of Azerbaijan stipulates that the observance and protection of the rights and freedom of individuals enshrined in the Constitution are the responsibility of the legislative, executive, and judicial authorities (1). According to Article 149.1 of the Constitution adopted in the Republic of Azerbaijan, "Legal acts must be based on law and justice (equal benefits, equal relationships)." Thus, the importance of the Constitution in the protection and guarantee of human rights is significant (Əliyev, 2014: 155). No one can restrict the exercise of the rights and freedoms of individuals. The rights and freedom of each person are limited by the grounds established in this Constitution and laws, as well as by the rights and freedoms of others. The restriction of rights and freedom must be proportionate to the expected result by the state (Shavtsova, 2009: 86).

In conclusion, the relevance of constitutional guarantees is associated with their role in ensuring stability and the rule of law in society.

The Constitution of the Republic of Azerbaijan guarantees the rights and freedom of citizens of the Republic of Azerbaijan, as well as foreigners residing on its territory and stateless persons. Holders of such rights also have the right to judicial protection against all intentional violations of their rights.

Judicial review is an effective and preferable mechanism for ensuring constitutional rights as a form of protection of the rights and freedom of individuals. In cases where it is impossible to prevent serious and irreversible harm related to the violation of rights and freedom through other courts, a complaint can be filed directly with the Constitutional Court. Recently, a series of domestic legal acts have been adopted to more effectively ensure the rights and freedoms of individuals, taking into account international legal standards. Referring to important international legal norms in the field of human rights has led to the adaptation of the legislation of the Republic of Azerbaijan to international standards in the field of human rights.

In conclusion, it can be concluded that constitutional guarantees are an integral part of ensuring justice, equality, and the protection of the rights and freedom of every member of society in the modern world. They establish the legal foundation upon which the social and political structure of the state is built.

Conclusion

In conclusion, it can be stated that the relevance of constitutional guarantees is associated with their role in ensuring stability and the rule of law in society. The Constitution of the Republic of Azerbaijan guarantees the rights and freedoms of the citizens of the Republic of Azerbaijan, as well as foreigners residing on its territory and stateless persons. Holders of such rights also have the right to judicial protection against all types of intentional violations of their rights. Judicial oversight is an effective and preferable mechanism for ensuring constitutional rights as a form of protecting the rights and freedoms of individuals. In cases where preventing serious and irreversible harm related to the violation of rights and freedoms through other courts is impossible, a complaint can be filed directly with the Constitutional Court. Recently, a series of domestic legal acts have been adopted to more effectively ensure the rights and freedoms of individuals, taking into account international legal standards. Referring to important international legal norms in the field of human rights has led to the adaptation of the legislation of the Republic of Azerbaijan to international norms in the field of human rights.

In conclusion, it can be inferred that constitutional guarantees are an integral part of ensuring justice, equality, and the protection of the rights and freedoms of every member of society in the modern world. They create the legal foundation upon which the social and political structure of the state is built.

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